

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

REC'D TN
REGULATORY AUTH.

'00 MAR 10 PM 3 '40

IN RE:

**APPLICATION OF MEMPHIS NETWORKX, LLC
FOR A CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY TO PROVIDE INTRASTATE
TELECOMMUNICATION SERVICES AND JOINT
PETITION OF MEMPHIS LIGHT GAS & WATER
DIVISION, A DIVISION OF THE CITY OF
MEMPHIS, TENNESSEE ("MLGW") AND A&L
NETWORKS-TENNESSEE, LLC ("A&L") FOR
APPROVAL OF AGREEMENT BETWEEN MLGW
AND A&L REGARDING JOINT OWNERSHIP OF
MEMPHIS NETWORKX, LLC.**

CLERK OF THE
EXECUTIVE SECRETARY

DOCKET NO. 99-00909

**RESPONSES OF TIME WARNER TELECOM OF THE MID-SOUTH, L.P.,
AND TIME WARNER COMMUNICATIONS OF THE MID-SOUTH, TO
THE DATA REQUESTS OF MEMPHIS NETWORKX, LLC, MLG&W , AND
A&L**

Comes now, Time Warner Telecom of the Mid-South, L.P. ("Time Warner Telecom") and Time Warner Communications of the Mid-South ("Time Warner Communications"), and responds to the data requests of Memphis Networkx, MLG&W, and A&L as follows:

REQUEST NO. 1. Provide an organizational chart of Time Warner showing the current ownership and relationship of Time Warner Telecom of the Mid-South, L.P. ("TWT") and Time Warner Communications of the Mid-South, L.P. ("TWC") and all other affiliates. Please include the names of the general partners and limited partners of TWT and TWC and the type of business in which each general partner and limited partner is engaged.

POSTED
3-14-00

RESPONSE: The question asks for information that is not relevant to any issue in this proceeding, and the information asked for is neither admissible nor reasonably calculated to lead to the discovery of admissible evidence.

Without waiving the above objection, Time Warner Telecom and Time Warner Communications respond to the request as follows:

Chart 1 (attached) is an organizational chart of Time Warner Entertainment Company, L.P., d/b/a Time Warner Communications of the Mid-South. Charts 2 and 3 (attached) are organizational charts of Time Warner Telecom of the Mid-South, L.P. Each of the companies identified on these charts are holding companies or companies directly or indirectly engaged in the business of providing entertainment or telecommunications services.

REQUEST NO. 2. Describe any procedures that TWC and/or TWT have in place to prevent cross subsidy between TWC and TWT. For each procedure listed, please indicate whether the procedure was put in place voluntarily or imposed by law, a regulatory agency, or other governmental entity. If imposed by law, a regulatory agency or other governmental entity, please indicate which law or entity.

RESPONSE: The question asks for information that is not relevant to any issue in this proceeding, and the information asked for is neither admissible nor reasonably calculated to lead to the discovery of admissible evidence.

Without waiving the above objection, Time Warner Telecom and Time Warner Communications respond to the request as follows:

No formal procedure exists to prevent cross subsidy between TWC and TWT. Neither company is subject to any federal or state law, rule or regulation preventing cross subsidy. The companies are, however, operated as separate entities and do not subsidize the cost of services for the other.

REQUEST NO. 3. Are accounting records of TWC and TWT and/or their affiliates combined, consolidated or aggregated for financial reporting or federal income tax purposes? If so, which entities accounting records were combined, consolidated or aggregated for the years ending 1994, 1995, 1996, 1997, 1998 and 1999 and will be combined for financial reporting periods in 2000. If financial reporting is done on a basis other than a calendar year and quarter, please indicate the appropriate reporting period and adjust your response accordingly.

RESPONSE: The question asks for information that is not relevant to any issue in this proceeding, and the information asked for is neither admissible nor reasonably calculated to lead to the discovery of admissible evidence.

Without waiving the above objection, Time Warner Telecom and Time Warner Communications respond to the request as follows:

No. Prior to 1998, Time Warner cable services and telephone services were operated as a division of Time Warner Entertainment Company, L.P. These services were consolidated in the financial reporting of Time Warner Entertainment Company, L.P. for all purposes. Since 1998, Time Warner Entertainment Company, L.P., and Time Warner Telecom of the MidSouth, L.P., report

separately for all purposes. All financial reporting is done on a calendar year and quarterly basis.

REQUEST NO. 4. What conditions, procedures or rules have been imposed upon TWT and/or TWC to insure that TWT does not receive subsidies from TWC?

RESPONSE: The question asks for information that is not relevant to any issue in this proceeding, and the information asked for is neither admissible nor reasonably calculated to lead to the discovery of admissible evidence.

Without waiving the above objection, Time Warner Telecom and Time Warner Communications respond to the request as follows:

None.

REQUEST NO. 5. Does any regulatory agency, governmental body, law or rule provide guidelines to TWC regarding cross subsidies to affiliates such as TWT? If so, please provide name of agency and/or a citation to rule or law.

RESPONSE: The question asks for information that is not relevant to any issue in this proceeding, and the information asked for is neither admissible nor reasonably calculated to lead to the discovery of admissible evidence.

Without waiving the above objection, Time Warner Telecom and Time Warner Communications respond to the request as follows:

No, TWC and TWT are not subject to such regulations.

REQUEST NO. 6. Who or what entity(ies) provided the start-up capital for TWT?

RESPONSE: The question asks for information that is not relevant to any issue in this proceeding, and the information asked for is neither admissible nor reasonably calculated to lead to the discovery of admissible evidence.

Without waiving the above objection, Time Warner Telecom and Time Warner Communications respond to the request as follows:

Time Warner Inc., a publicly owned New York Stock Exchange company.

REQUEST NO. 7. Do TWC and TWT share any facilities for the provision of cable services by TWC and provision of telecommunications services by TWT? If so, please list the facilities that are shared, describe the services that are provided using shared facilities (please indicate which services are regulated by TRA) and describe the cost allocation to each entity that shares the facilities.

RESPONSE: The question asks for information that is not relevant to any issue in this proceeding, and the information asked for is neither admissible nor reasonably calculated to lead to the discovery of admissible evidence.

Without waiving the above objection, Time Warner Telecom and Time Warner Communications respond to the request as follows:

No, TWC and TWT do not share any facilities used to provision cable or telecommunication services.

REQUEST NO. 8. Do TWC and TWT share any employees? If so, please list the positions that are shared and describe the cost allocation to each entity that shares these employees?

RESPONSE: The question asks for information that is not relevant to any issue in this proceeding, and the information asked for is neither admissible nor reasonably calculated to lead to the discovery of admissible evidence.

Without waiving the above objection, Time Warner Telecom and Time Warner Communications respond to the request as follows:

No, TWC and TWT have no shared employees.

REQUEST NO. 9. Have there been any intra-company loans between TWC and TWT between 1994 and the present? If so, please identify the borrower, the debtor, the date the loan was made, the amount of the loan, the interest rate, the terms of repayment, and if paid in full, the date of repayment?

RESPONSE: The question asks for information that is not relevant to any issue in this proceeding, and the information asked for is neither admissible nor reasonably calculated to lead to the discovery of admissible evidence.

Without waiving the above objection, Time Warner Telecom and Time Warner Communications respond to the request as follows:

No, there have been no loans.

REQUEST NO. 10. Have any assets been sold by or transferred from TWC to TWT at less than fair market value since TWT has been certified in Tennessee to

provide telecommunications services? If so, please identify the assets sold or transferred, the date sold or transferred, the fair market value of the assets and the amount paid by TWT. Please describe any transactions not identified in your response to the question above that occurred between TWC and TWT and any predecessor companies of either entity made in anticipation of TWT's application for a certificate of convenience and necessity before the Tennessee Public Service Commission (the predecessor to the TRA) and subsequent to the granting of the certificate to TWT.

RESPONSE: The question asks for information that is not relevant to any issue in this proceeding, and the information asked for is neither admissible nor reasonably calculated to lead to the discovery of admissible evidence.

Without waiving the above objection, Time Warner Telecom and Time Warner Communications respond to the request as follows:

No, there have been no assets transferred at less than fair market value. In response to the third sub-part of this Data Request 10, Time Warner Entertainment Company, L.P. conveyed all of the assets of its telecommunications operation to Time Warner Telecom, Inc., in conjunction with the creation of Time Warner Telecom, Inc. This transaction was reported to the Federal Securities Exchange Commission as part of the required filings for a public debt offering and an initial public offering of common stock. A copy of these public documents can be viewed and retrieved from the following worldwide web address: www.edgar-online.com/bin/esearch/?cik=1057758&date=1994. The following table is the menu selection found at the above address:

Date	Filings
Feb 22 000	SC 13G/A: Amended Ownership Statement
Feb 14 2000	SC 13G: Ownership Statement
Feb 14 2000	SC 13G: Ownership Statement
Feb 14 2000	SC 13G: Ownership Statement
Feb 11 2000	SC 13G: Ownership Statement
Feb 10 2000	SC 13G: Ownership Statement
Dec 2 1999	S-8: Employee Benefit Plan Registration Statement
Nov 12 1999	10-Q: Quarterly Report
Aug 16 1999	10-Q: Quarterly Report
Jul 29 1999	S-8: Employee Benefit Plan Registration Statement
Jul 28 1999	8-A12G/A: Amended Registration Statement
Jul 28 1999	15-15D: Certification of Termination of Registration
May 20 1999	3: Initial Filing of Equity Securities
May 18 1999	8-K/A: Amended Report of Unscheduled Material Events
May 17 1999	10-Q: Quarterly Report
May 14 1999	8-K: Report of Unscheduled Material Events
May 12 1999	424B1: Omitted Information From Original Registration Statement
May 11 1999	S-1/A: Amended Initial Registration Statement
May 6 1999	S-1/A: Amended Initial Registration Statement
Apr 21 1999	S-1/A: Amended Initial Registration Statement

Mar 30 1999	<u>S-1/A</u> : Amended Initial Registration Statement
Mar 11 1999	<u>S-1/A</u> : Amended Initial Registration Statement
Jan 20 1999	<u>S-1/A</u> : Amended Initial Registration Statement
Jul 17 1998	<u>424B1</u> : Omitted Information From Original Registration Statement
Jul 15 1998	<u>S-1/A</u> : Amended Initial Registration Statement
Jul 6 1998	<u>S-1/A</u> : Amended Initial Registration Statement
Jun 23 1998	<u>S-1/A</u> : Amended Initial Registration Statement
May 26 1998	<u>S-1</u> : Initial Registration Statement
May 26 1998	<u>S-1/A</u> : Amended Initial Registration Statement
Apr 6 1998	<u>S-1</u> : Initial Registration Statement

REQUEST NO. 11. Do TWC and/or TWT market any of their services jointly to their respective prospective customers? If so, please describe the services that are jointly marketed, joint marketing procedures and the method used for allocating joint marketing expenses between the respective companies?

RESPONSE: The question asks for information that is not relevant to any issue in this proceeding, and the information asked for is neither admissible nor reasonably calculated to lead to the discovery of admissible evidence.

Without waiving the above objection, Time Warner Telecom and Time Warner Communications respond to the request as follows:

No, the companies do not jointly market any of their respective services.

REQUEST NO. 12. Does TWT report transactions with TWC to the TRA or any other governmental agency?

RESPONSE: The question asks for information that is not relevant to any issue in this proceeding, and the information asked for is neither admissible nor reasonably calculated to lead to the discovery of admissible evidence.

Without waiving the above objection, Time Warner Telecom and Time Warner Communications respond to the request as follows:

No.

REQUEST NO. 13. Please provide a copy of the respective franchise agreements that TWC and TWT have with the City of Memphis and/or Shelby County to provide services in the Memphis area. If TWC and TWT use the same franchise, please indicate accordingly.

RESPONSE: The question asks for information that is not relevant to any issue in this proceeding, and the information asked for is neither admissible nor reasonably calculated to lead to the discovery of admissible evidence.

Without waiving the above objection, Time Warner Telecom and Time Warner Communications respond to the request as follows:

- (a) A copy of franchise Ordinance No. 4288 of the City of Memphis permitting provisioning of telecommunication services is attached. Although the franchise is issued to Time Warner AXS of Tennessee, L.P., Time Warner of the Mid-South and Time Warner Entertainment Company, L.P., Time Warner AXS of Tennessee, L.P. (now Time Warner Telecom of the Mid-South, L.P. pursuant to a name change

approved by the Tennessee Regulatory Authority) is the only entity offering telecommunication services pursuant to the franchise.

- (b) A copy of franchise Ordinance No. 4159 of the City of Memphis is attached. This franchise was issued to Time Warner Entertainment Company, L.P. and Time Warner Telecommunications of the Mid-South (now Time Warner Communications of Mid-South) for the purpose of permitting the provisioning of cable services, and it is the only entity which provides those services.
- (c) A copy of franchise Ordinance No. 134 of Shelby County, Tennessee is attached. This franchise was issued to Memphis CATV (now Time Warner Communications of the Mid-South) granting permission to own, operate and maintain a broadband telecommunications system in Shelby County, Tennessee.

REQUEST NO. 14. Which Time Warner entity provides the Road Runner Service?

RESPONSE: The question asks for information that is not relevant to any issue in this proceeding, and the information asked for is neither admissible nor reasonably calculated to lead to the discovery of admissible evidence.

Without waiving the above objection, Time Warner Telecom and Time Warner Communications respond to the request as follows:

Time Warner Communications of the Mid-South.

REQUEST NO. 15. Please describe the Road Runner Service.

RESPONSE: The question asks for information that is not relevant to any issue in this proceeding, and the information asked for is neither admissible nor reasonably calculated to lead to the discovery of admissible evidence.

Without waiving the above objection, Time Warner Telecom and Time Warner Communications respond to the request as follows:

The Time Warner Road Runner service provides high speed data via cable modem.

REQUEST NO. 16. Does the Road Runner Service include voice transmission? If not, does the provider of the service intend to provide voice transmission services in the future? If so, when?

RESPONSE: The question asks for information that is not relevant to any issue in this proceeding, and the information asked for is neither admissible nor reasonably calculated to lead to the discovery of admissible evidence.

Without waiving the above objection, Time Warner Telecom and Time Warner Communications respond to the request as follows:

No, Road Runner Service does not include voice transmission. Time Warner Communications does intend to provide voice transmission at some point in the future, but a time frame for providing such services has not been identified.

REQUEST NO. 17. If you intend to provide voice transmission to the public switched network, do you intend to seek regulatory authority from the TRA?

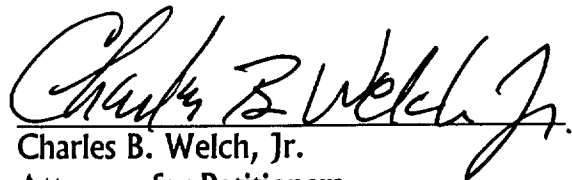
RESPONSE: The question asks for information that is not relevant to any issue in this proceeding, and the information asked for is neither admissible nor reasonably calculated to lead to the discovery of admissible evidence.

Without waiving the above objection, Time Warner Telecom and Time Warner Communications respond to the request as follows:

Time Warner Telecom of the Mid-South, L.P. has regulatory authority required to provide voice transmission to the public switch network. If and when Time Warner Entertainment Company, L.P. d/b/a Time Warner Communications of the Mid-South decides to provide voice transmission to the public switch network it will seek regulatory authority before providing services or installing facilities to provide such services, if such authority is required by law and/or rule of the Tennessee Regulatory Authority.

Respectfully submitted,

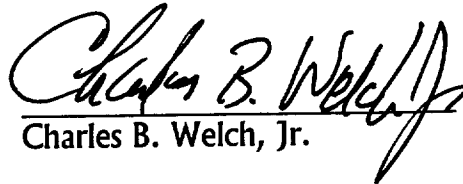
**FARRIS, MATHEWS, BRANAN
BOBANGO & HELLEN, P.L.C.**

A handwritten signature in black ink, appearing to read "Charles B. Welch, Jr.", is written over a horizontal line.

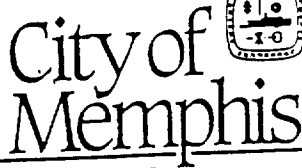
Charles B. Welch, Jr.
Attorney for Petitioners
618 Church Street, Ste. 300
Nashville, Tennessee 37219
(615) 726-1200

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been hand delivered to D. Billye Sanders, Waller Lansden Dortch & Davis, PLLC, 511 Union Street, Suite 2100, Nashville, Tennessee 37219-8966 and John Knox Walkup, Wyatt, Tarrant & Combs, 511 Union Street, Suite 1500, Nashville, Tennessee 37219-1750, on this the 9th day of March 2000.


Charles B. Welch, Jr.

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DR. W. W. HERENTON - Mayor
DAVID F. HANSEN - Chief Administrative Officer
DIVISION OF FINANCE & ADMINISTRATION
RICK MASSON - Director
Council Records

CERTIFICATION

STATE OF TENNESSEE
COUNTY OF SHELBY

I, James Huckabee, do hereby certify that I am the duly appointed, qualified Deputy Comptroller of the City of Memphis, and that as such official, I am charged with the duty of keeping the minute records, papers and all matters coming before the Council of said City.

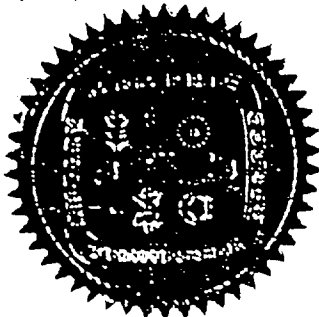
I further certify that I have examined the records and compared the following with the proceedings of the Council of the City of Memphis, and the same is a full, true and complete copy of the following:

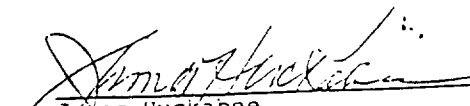
ORDINANCE NO. 4288

ISSUANCE OF A FRANCHISE TO TIME WARNER AXS OF TENNESSEE, L.P., TIME WARNER OF THE MID-SOUTH AND TIME WARNER ENTERTAINMENT COMPANY, L.P. FOR USE OF THE STREETS, ALLEYS, THOROUGHFARES, RIGHT OF WAY OF THE FACILITIES FOR THE OPERATION OF FIBER OPTIC AND OTHER COMMUNICATIONS SERVICES AND ESTABLISHING REQUIREMENTS, TERMS, CONDITIONS AND LIMITATIONS FOR SUCH FRANCHISE.

and the same is a full, true and complete copy thereof, the original of which is on file and a matter of record in my office.

GIVEN under my hand and the Official Seal of the City of Memphis, Tennessee, this 16th day of June, 1995.




James Huckabee
Deputy Comptroller

SUBSTITUTE ORDINANCE NO. 4288

AN ORDINANCE AUTHORIZING THE ISSUANCE OF A FRANCHISE TO TIME WARNER AXS OF TENNESSEE, L.P., TIME WARNER OF THE MID-SOUTH AND TIME WARNER ENTERTAINMENT COMPANY, L.P. FOR USE OF THE STREETS, ALLEYS, THOROUGHFARES, RIGHT OF WAY OF THE CITY OF MEMPHIS FOR INSTALLATION AND USE OF FACILITIES FOR THE OPERATION OF FIBER OPTIC AND OTHER COMMUNICATIONS SERVICES AND ESTABLISHING REQUIREMENTS, TERMS, CONDITIONS AND LIMITATIONS FOR SUCH FRANCHISE.

WHEREAS, due to expanding and improved technology, the capability of fiber optic cable to provide communications services has grown in recent years; and,

WHEREAS, in order to provide fiber optic communications and other telecommunication services to the public, it is necessary to place fiber optic cable and possibly other facilities as well, on, above or beneath public rights-of-way; and,

WHEREAS, it is proper that permission to use the public rights-of-way for fiber optic communications services be granted in the form of a revocable franchise under authority of Section 15 of Ordinance No. 1852, the Home Rule Charter of The City of Memphis; and,

NOW, THEREFORE, BE IT ENACTED AND ORDERED BY THE COUNCIL OF THE CITY OF MEMPHIS. That the following franchise privilege be granted:

SECTION 1. DECLARATION OF NEED. That the City Council finds and declares that, within the City of Memphis, the public necessity requires the development of competing telephone service in the form of fiber optic and other communications capability, and that a number of companies are currently able and willing to provide such service.

SECTION 2. DEFINITIONS.

2.1 "Anniversary Date" shall mean the date on which a franchise agreement is fully executed.

2.2 "Charter" shall mean collectively (i) Ordinance No. 1852, Home Rule Charter adopted by Referendum vote on November 8, 1966 (the "Home Rule Charter") and (ii) the Charter of the City of Memphis as enacted in Acts 1879 as amended to the extent not repealed by the Home Rule Charter.

2.3 "City" shall mean the City of Memphis.

2.4 "City Engineer" shall mean the position of City Engineer created by the Charter or a successor position, or an acting City Engineer or the designee of the City Engineer.

2.5 "Compensation Year" means each calendar year during the term of a franchise agreement in which compensation is paid to the City.

2.6 "Council" shall mean the Council of The City of Memphis.

2.7 "Day" or "Days" shall mean a calendar day or days.

2.8 "Director of Finance" shall mean the position of Director of Finance and Administration created pursuant to and under the Charter or a successor position, or an acting Director of Finance, or the designee of the Director of Finance.

2.9 "FCC" shall mean the Federal Communications Commission, or any successor agency.

2.10 "Franchise" shall mean the non-exclusive privilege and authorization granted as provided in this ordinance to occupy or use the streets and/or public rights-of-way within the City for the construction, operation and maintenance of a fiber optic and/or other telecommunications systems within all or a portion of the City.

2.11 "Franchise Agreement" shall mean a fully executed and notarized contractual agreement by and between the City and grantee, wherein grantee accepts the provisions stated in this ordinance.

2.12 "Gross Revenue" shall mean all receipts collected by the Grantee for all telecommunications and related operations and services within the corporate limits of the City, arising from operation or possession of this franchise. By way of example, but without limitation, "Gross Revenue" shall mean all receipts and revenues (exclusive of sales tax) collected by Grantee from operation of Grantee's system installed pursuant to this franchise ordinance, and any related services provided by the Grantee within the City, including, but not limited to:

1. all telecommunications service revenues charged on a flat rate basis;
2. all telecommunications services charged on a usage sensitive or mileage basis;
3. all revenues from installation service charges;
4. all revenues from connection or disconnection fees;

5. all revenues from penalties or charges to customers for checks returned from banks, net of bank costs paid;
6. all revenues from equipment sold or rented to customer upon customer premises;
7. all revenues and receipts from local service;
8. all revenues and receipts from authorized rental of conduit space;
9. all revenues and receipts from charges for access to local and of long distance networks;
10. all revenues and receipts from authorized rentals of any portion of Grantee's System, including plant, facilities, or capacity leased to others;
11. all other revenues and receipts collected from Grantee's business pursued with the City, excluding third party billing arrangements not related to Grantee's business;
12. recoveries of bad debts previously written off and revenues from the sale or assignment of bad debts. Unrecovered bad debts charged off after diligent, unsuccessful efforts to collect are excludable from gross revenues; and
13. all revenues and receipts from operations of any subsidiary or affiliated company, which provides any of Grantee's telecommunication services;
14. tolls from business which both originates and terminates in the State of Tennessee;
15. actually collected franchise fees and occupation taxes surcharged to customers but only to the extent includible in the franchise tax base of all other telecommunication franchisees of the City;
16. all revenues and receipts from the lease or re-sale of lines or circuit paths to third parties.

Unless authorized by law, gross revenues shall not include revenues from interstate toll operations, nor revenue uncollectible from customers.

2.13 "PSC" shall mean the Tennessee Public Service Commission or any successor agency.

2.14 "Public Right-of-Way" shall mean real property subsurface and air rights acquired by the City by any lawful means and includes the surface and that area below the surface which is necessary to support the public street, alley, path, bridge, tunnel, sidewalk, planting strip, median, waterway, dock, wharf, pier, public ground or other public right-of-way. Public right-of-way also includes the surface of any public street, alley, path, bridge, tunnel, sidewalk, planting strip, median, waterway, dock, wharf, pier, public ground or other public right-of-way acquired by the City. No reference herein or in any franchise for use of any public right-of-way shall be deemed to be a representation or guarantee by the City that its title to any public right-of-way or any improvement or object located therein is sufficient to permit or authorize its use by the Grantee.

2.15 "System" or "Telecommunications System" shall mean Grantee's network of cables, wires, lines, towers, wave guides, optic fiber, microwave, laser beams, and any

associated converters, equipment, or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing by audio, video or other forms of electronic signals to or from subscribers or locations within the City, but not including cable television services as defined under the Cable Communications Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, and/or any franchise granted by the City pursuant to said Act.

2.16 "Grantee" shall mean collectively Time Warner AxS of Tennessee, L.P., Time Warner of the Mid-South and Time Warner Entertainment Company, L.P., who shall provide access or local telecommunications service using facilities either constructed, owned or leased for the purpose of providing voice, data or video telecommunication service.

SECTION 3. GRANT OF FRANCHISE.

3.1 The City warrants that it has the right to issue a non-exclusive, revocable franchise to Grantee to have, acquire, construct, expand, reconstruct, maintain, use and operate in, along, across, on, over, through, above and under the public streets, alleys and rights-of-way of the city, a telecommunications system (the "System"). Except to the extent that the federal or state government acquires or assumes exclusive jurisdiction over the regulation of fiber optic or other telecommunications franchises, Grantee agrees that it shall not now or at any time after this franchise is granted challenge this City's right to regulate this franchise or to be compensated for the use of public rights-of-way in any state or federal court and that the franchise issued hereby shall remain in full force and effect as a binding contract between the grantee and the City. Notwithstanding the foregoing, Grantee is not prohibited from challenging the City's arbitrary and capricious exercise of its police powers in the regulation of this franchise.

That Grantee, acquires and accepts only such rights and privileges as the City of Memphis has authority to grant and the City shall not be liable or responsible in any way or for any sum paid to it on account of, or in consequence of, a deficit or defect of power or authority to grant this franchise, but Grantee assumes all risks of lack of power in the City of Memphis with respect to such payments.

3.2 Franchise - Grant conditions, terms.

A. This franchise, and all renewals, extensions and amendments hereof shall be granted only by ordinance. No such ordinance shall be adopted before an application therefor has been filed with the Council through the City's Chief Administrative Officer.

B. Grantee shall not provide cable services or operate a cable system as defined in the Cable Television Consumer Protection and Competition Act of 1992 (47 U.S.C.A. §521, et seq. as amended) or as recognized by the Federal Communications Commission (the "FCC") without first obtaining a separate cable franchise from the City and shall not allow the use of the System by a cable system that has not been granted a franchise by the City. Nor shall any provider of cable services or grantee of cable television service operate or provide a telecommunications franchise pursuant to this ordinance, unless a separate telecommunication franchise is obtained from the City.

C. Grantee shall not provide services directly regulated by the Tennessee Public Services Commission (the "P.S.C.") under the laws of Tennessee unless duly authorized by the P.S.C. or by any successor entity.

D. Except as permitted by Section 26 hereof, this franchise is granted to Grantee solely for the purpose of directly serving its end-user customers (including but not limited to hotels, motels, hospitals and buildings with shared tenant services) and inter-exchange carriers.

E. This Franchise shall be deemed a contract, which contract shall be submitted to the Mayor in the manner provided for in the Charter presently in effect or hereafter adopted.

SECTION 4. CONSTRUCTION.

4.1 Licenses and Permits. The Grantee shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the System, and to construct, maintain and repair any part thereof prior to commencement of any such activity.

Issuance of a permit by any agency of the City as to the construction and installation of any portion of Grantee's System does not waive other applicable requirements of federal or Tennessee law, and Grantee shall comply with such other requirements.

4.2 Subject to Police Power.

The construction, expansion, reconstruction, excavation, use, maintenance and operation of the System shall be subject to all lawful police regulations of the City and performed in accordance with all ordinances, laws, resolutions and regulations of the City for utility location and excavation in public rights-of-way presently in effect or hereafter adopted. In addition to the duty under any other law or regulation of the City, not less than seven (7) days prior to filing of a request for a construction permit, Grantee shall provide to the City Engineer a copy of all the construction work plans and drawings for the System, or any segment or expansion thereof. Grantee shall not proceed with construction until the plans and drawings have been approved in writing by the City Engineer.

Nothing in this Ordinance shall be construed as preventing the City of Memphis, whenever it shall be empowered by applicable state and federal law so to do, from fixing or regulating the rates, rentals, charges, services, facilities and equipment of Grantee or from exercising general supervision and regulation of, jurisdiction and control over, this franchise, the Grantee, and its property, property rights, facilities and franchises; it being the intention of this Ordinance, that the City of Memphis in no way surrenders such general powers it may now have, or may hereafter have or acquire.

SECTION 5. AS BUILT DRAWINGS.

Upon request, Grantee shall submit to the City Engineer "as built" drawings of the portions of Grantee's System located along the public right-of-way of a size and material satisfactory to the City Engineer within sixty (60) days after completion of construction of such portions or approval of this franchise, whichever occurs last. Grantee shall also upon request update such drawings within sixty (60) days whenever material changes are made to Grantee's System which impact the public right-of-way. Said drawings, set forth by utility quarter sections, shall at a minimum include cable routings and the location of amplifiers, power supplies and system monitor test points.

SECTION 6. CONSTRUCTION STANDARDS.

6.1 All work done in connection with the construction, expansion, reconstruction, maintenance or repair of the System shall be subject to and governed by all laws, rules, and regulations of the City in accordance with the applicable provisions of the City's Building Code. Grantee shall excavate only for the construction, installation, expansion, repair, removal, and maintenance of all or a portion of its System.

All installations shall be underground in those areas of the City where public utilities providing telephone and electric service are underground at the time of installation. In areas where either telephone or electric utility facilities are above ground at the time of installation, Grantee may install its service above ground, provided that, at such time as those facilities are required to be placed underground by the City, or are placed underground, Grantee shall likewise place its services underground without additional cost to the City or to the individual subscriber so served. Where not otherwise required to be placed underground by this article or the franchise agreement, Grantee's System shall be located underground at the request of the adjacent property owner, provided that the excess cost over the serial location shall be borne by the property owner making the request.

6.2 Electrical Standards.

Grantee shall at all times comply fully with provisions of the Electrical Code of the City.

6.3 Interference with persons, improvements, public and private property and utilities. Grantee's System and facilities, including poles, lines, equipment and all appurtenances, shall be located, erected and maintained so that such facilities shall:

- (A) Not endanger or interfere with the health, safety or lives of persons;
- (B) Not interfere with any improvements the City or State may deem proper to make;
- (C) Not interfere with the free and proper use of public streets, alleys, bridges, easements or other public ways, places or

property, except to the minimum extent possible during actual construction or repair:

- (D) Not interfere with the rights and reasonable convenience of private property owners, except to the minimum extent possible during actual construction or repair; nor
- (E) Not obstruct, hinder or interfere with any gas, electric, water or telephone facilities or other utilities within the City.

6.4 Protect Structures. In connection with the construction, operation, maintenance, repair or removal of the System, the Grantee shall, at its own cost and expense, protect any and all existing structures and improvements, including landscaping and trees belonging to the City, and all designated historical landmarks, as well as all other structures within any designated historical district. The Grantee shall obtain the prior approval of the City before altering or crossing any water main, sewerage or drainage system, or any other municipal, state or federally-owned structure in the streets required because of the presence of the System in the Streets. Any such alteration shall be made by the Grantee at its sole cost and expense, and in a manner prescribed by the City. The Grantee shall be liable, at its own cost and expense, to replace or repair and restore to serviceable condition in a manner as may be specified by the City, any street or any municipal, state or federally-owned structure involved in the construction of the System that may become disturbed or damaged as a result of any work thereon by or on behalf of the Grantee pursuant to its franchise.

6.5 Erection, Removal and Use of Poles.

No poles shall be erected by Grantee without prior approval of the City with regard to location, height, types and any other pertinent aspect. However, no location of any pole or wire-holding structure of Grantee shall give rise to a vested interest, and such pole or structures shall be removed or modified by Grantee at its own expense whenever the City determines that the public convenience would be enhanced thereby. Approval under this section shall require the written approval of the City Engineer.

6.6 Upon request of the City or other authority of competent jurisdiction, Grantee shall remove and abate any portion of the System or any facility that is dangerous to life or

property, and in case Grantee, after five (5) days written notice from the City Engineer, fails or refuses to act, the City may remove, relocate or abate the same, at the sole cost and expense of Grantee, all without compensation or liability for damages to Grantee; provided, however, Grantee may recover damages sustained by it from any person other than the City who relocates, removes or abates any such Grantee facility negligently or without the City Engineer giving five (5) days written notice to Grantee authorizing such other person to relocate or remove Grantee's facilities on behalf of the City.

SECTION 7. SUSPENSION OR REVOCATION OF CONSTRUCTION PERMIT.

The City Engineer may suspend or revoke any permit issued by the City or take any action he deems necessary, including the stopping of work, should Grantee violate the terms of said permit, until said violation has been corrected to the City Engineer's satisfaction.

SECTION 8. ADJUSTMENT OF UTILITY FACILITIES.

In the event that the location of Grantee's System will require an adjustment of the location of existing public or private utility facilities, Grantee must obtain written consent of the owner of such utility, including, where applicable, all relevant City departments to such adjustment and make such arrangements for the payment or reimbursement of the cost of such adjustment as are satisfactory to the owner of such utility, including, where applicable, all relevant City departments. No permit for construction will be issued until the City Engineer is satisfied that the requirements of this section have been satisfied. In no case shall Grantee be entitled to perform such adjustment or disturb such utility facilities without the written consent of the owner of such utility.

SECTION 9. ADJOINING PROPERTY OWNERS.

All of Grantee's System shall be so installed and located so as to cause minimum interference with the rights and appearance and reasonable convenience of adjoining property owners and all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. Grantee shall at all times employ reasonable care, and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

SECTION 10. EMERGENCY OR DISASTER.

In case of emergency or disaster, Grantee shall, upon request of the City, make available its facilities to the City, without cost, for emergency use.

SECTION 11. MOVING WIRES. The City may, at any time, in case of fire, disaster or other emergency, as determined by the City in its reasonable discretion, cut or move any other optical fibers, wires, cable, amplifiers, appliances, or other parts of the System in the streets or in City buildings, in which event the City shall not be liable therefor to the Grantee.

SECTION 12. TEMPORARY REMOVAL OF FACILITIES FOR DEMOLITION OF BUILDINGS.

Upon the request of a person holding a permit issued by the City for the moving or demolition of a building, and at least ten (10) days notice, Grantee shall temporarily raise, lower or remove its facilities to permit the removal or demolition of such building. The expense of such temporary removal, raising or lowering of facilities shall be paid by the person requesting the same and Grantee shall have the authority to require such payment in advance; provided, however, that no payment (direct or indirect) shall be required of the City.

SECTION 13. REMOVAL OF CITY PROPERTY. No property of the City is to be removed from the right-of-way, including signage on utility poles, without prior approval from the City.

SECTION 14. RESERVATION OF RIGHTS.

The City reserves the right to exercise its police and/or proprietary powers to modify, vacate or transfer any right-of-way in use by Grantee for a public purpose. At Grantee's own risk, the City has the predominant right to use its right-of-way in the placement, maintenance and repair of sewers, water mains and other public utility franchises or to relocate or remove Grantee's system where the City determines that the public convenience and/or necessity would be enhanced or for any other public purpose, including, but not limited to the use of any right-of-way used by Grantee for public transportation purposes. The permits referred to in Section 4 may be amended or revoked in whole or in part by the

issuing department whenever such action is necessary or advisable for a public purpose. Grantee shall make no claims for costs or damages against the City by reason of such removal or relocation. Upon 30 days written notice to Grantee of partial or complete revocation of such permit from the City Engineer, Grantee shall remove, modify, replace or relocate its facilities as required at its own expense. In the event Grantee does not remove, modify, replace or relocate its facilities as required by said notice within thirty (30) days as aforesaid, the City Engineer may cause the same to be done at Grantee's expense and all expenses incurred or damages paid by the City on account of such action shall be paid by Grantee on demand. Grantee shall remove, replace or modify, at its own expense, the installation of any of its facilities as may be deemed necessary by any other appropriate governmental authority to meet such authority's proper responsibilities. In the event the City exercises its predominant right to use any right-of-way used by Grantee for a public purpose, the City shall reasonably cooperate with Grantee in finding an alternate site for any telecommunications facilities removed and in avoiding disruption to Grantee's telecommunications system to the extent not reasonably required by the City. In an emergency, as determined by the City Engineer, the City may order Grantee to remove or relocate its facilities within forty-eight (48) hours. If the City exercises any of its rights pursuant to this Section, Grantee shall have the option, upon notice to the City Engineer, of abandoning the portion of its telecommunications system to be so removed or relocated and deleting such portion from the public right-of-way.

SECTION 15. ABANDONMENT OF RIGHT-OF-WAY.

In the event that the City shall close or abandon any public street, alley or right-of-way, which contains any portion of Grantee's system, any conveyance of land contained in such closed or abandoned public street, alley, highway or right-of-way shall be subject to the rights herein granted.

SECTION 16. RELOCATION OF THE SYSTEM.

16.1 New Grade or Lines. If the grades or lines of any street on which Grantee's System is placed are changed at any time during the term of the Franchise, then the Grantee shall, at its own cost and expense and upon the request of the City, protect or promptly alter

or relocate the System, or any part thereof, so as to conform with such new grades or lines. In the event that the Grantee refuses or neglects to so protect, alter, or relocate all or part of the System, the City shall have the right to break through, remove, alter or relocate such part of the System, without any liability to the City, and the Grantee shall pay to the City the costs incurred in connection with such breaking through, removal, alteration or relocation.

16.2 Relocation of Right-of-Way. Wherever a public right-of-way or other public property is being constructed, paved (whether or not such paving is part of a more extensive improvement project), resurfaced, relocated or otherwise altered or improved (including, but not limited to, the installation of sidewalk, curb, gutter, drainage facilities, water mains, or sewer mains, traffic signals or trees), Grantee shall, within ninety (90) days of written notice from the City Engineer, and at no cost (direct or indirect) to the City, remove or relocate any Grantee facility located within such public right-of-way or public property or perform such work as it deems necessary for the extension of new facilities. The relocation or extension of new facilities shall be to a location approved by the City. Failure to obtain the City's approval of the location of facilities relocated under this section will be considered a forfeiture under Section 31 of this Ordinance. Grantee shall be responsible for any damage it causes to property, including damage to trees and other landscaping, as a result of the relocation or removal of facilities.

16.3 Time Limit - Liquidated Damages. Failure of Grantee to remove or relocate the facility to a location approved by the City within ninety (90) days of the City's written notice shall entitle the City to recover liquidated damages from Grantee. The liquidated damages for failure to remove or relocate a facility shall be \$250.00 per diem.

If Grantee believes it will be unable to complete the relocation within ninety (90) days from receipt of notice from the City, Grantee shall explain the reasons for its inability in detail and the City and Grantee shall attempt to agree on an alternate schedule, subject, however, to the City's right to finally determine the schedule and liquidated damages, as long as its decision is not unreasonable. The provisions of this section shall be suspended in the event of the occurrence of any act of God; fire; lock-out, strike or other labor dispute; riot

or civil disturbance; act of public enemy; enactment, rule, order or act of government or governmental instrumentality (whether federal, state or local); or any other cause of a similar or different nature beyond the control of the Grantee which prevents the Grantee from obtaining the materials, skilled labor, or any other instrumentalities necessary to perform the requirement of this section.

SECTION 17. BONDS.

(A) Grantee shall obtain and maintain, at its sole cost and expense, and file with the Division of Finance and Administration, a corporate surety bond with a surety company authorized to do business in the State of Tennessee and found acceptable by the City Attorney, in the amount of One Hundred Thousand Dollars (\$100,000), both to guarantee the timely construction and full activation of Grantee's system, and to secure Grantee's performance of its obligations and faithful adherence to all requirements of this franchise ordinance. On and after June 30, 2000, the City reserves the right to adjust the bond requirement to secure Grantee's performance of its obligations and faithful adherence to all of the requirements of this franchise ordinance, provided it is reasonable and applicable to all telecommunication franchisees. Grantee shall provide this corporate surety bond at the time of execution of a written acceptance of this franchise as required by Section 37 herein.

(B) The rights reserved to the City with respect to the bond are in addition to all other rights of the City, whether reserved by this franchise ordinance or authorized by law; and no action, proceeding or exercise of a right with respect to such bond shall affect any other right the City may have.

(C) The bond shall contain the following endorsement; it is hereby understood and agreed that this bond may not be cancelled by the surety nor any intention not to renew be exercised by the surety until sixty (60) days after receipt by the City, by registered mail, of written notice of such intent.

SECTION 18. INSURANCE REQUIREMENTS.

On or before the effective date of the franchise, Grantee shall file with the City a certificate of insurance and thereafter maintain in full force and effect at all times for the full term of the franchise, at the expense of Grantee, a comprehensive general liability insurance policy, including underground property damage coverage, naming the City as additional insured, written by a company authorized to do business in the State of Tennessee, protecting the City against liability for loss or bodily injury and property damage occasioned by the installation, removal, maintenance, or operation of the communications system by Grantee in the following minimum amounts:

- (1) One Million Dollars (\$1,000,000.00) combined single limit, bodily injury and for real property damage in any one occurrence.
- (2) Five Million Dollars (\$5,000,000.00) aggregate

Grantee shall also file with the City a certificate of insurance for a comprehensive automobile liability insurance policy written by a company authorized to do business in the State of Tennessee, for all owned, non-owned, hired and leased vehicles operated by Grantee, with limits no less than One Million Dollars (\$1,000,000.00) each accident, single limit, bodily injury and property damage combined, or evidence of self-insurance.

Grantee shall maintain throughout the term of the franchise, workers compensation and employers liability, valid in the State, in the minimum amount of the statutory limit for workers compensation.

All liability insurance required pursuant to this section shall be kept in full force and effect by Grantee during the existence of the franchise and until after the removal of all poles, wires, cables, underground conduits, manholes and any other conductors and fixtures installed by Grantee incident to the maintenance and operation of the communications system as defined in this ordinance. All policies shall be endorsed to give the City thirty (30) days written notice of the intent to amend or cancel by either Grantee or the insuring company.

SECTION 19. INDEMNIFICATION.

Grantee shall indemnify, defend and save whole and harmless the City and all of its officers, agencies, and employees against and from any and all claims, suits, judgments, actions, losses, costs and expenses, including attorney's fees and costs or expenses incidental to the investigation and defense of claims and lawsuits brought for, on behalf of, or on account of any injuries or damages received or sustained by any person, firm or corporation or to any property, which may be occasioned by, or arising out of or from, the conduct of Grantee in connection with this franchise ordinance, the construction, reconstruction, expansion, removal, maintenance, operation, or repair of Grantee's system, the conduct of Grantee's business in the City of Memphis pursuant to this franchise ordinance, any occurrence in connection with the franchise ordinance, any and all claims and lawsuits arising from any breach or default on the part of Grantee in the performance of any term, condition, provision, covenant or agreement to be performed by Grantee pursuant to this franchise ordinance, any act or omission of Grantee, or any of its agents, contractors, subcontractors, servants, employees or licensees, or any relationship between Grantee and its end use customers and retailers whether caused by or attributable solely to Grantee and others, or the City, and Grantee shall pay all judgments, with costs, counsel fees and expenses, which may be obtained against the City related to any such claim. The City agrees to give Grantee prompt and reasonable notice of any claims or lawsuits; and Grantee shall have the right to investigate, compromise and defend same to the extent of its own interest. The above indemnification shall not apply to any judgment of liability resulting from the gross negligence or willful misconduct of the City. The terms and provisions contained in this Section are intended to be for the benefit of the City and Grantee, and are not intended to be for the benefit of any third party. The City shall have the right to participate or conduct the defense of its interests in any proceeding, and thereby assume risks and liabilities for its own acts or omissions.

SECTION 20. INITIAL COMPENSATION TO THE CITY.

(A) As an additional Compensation for the franchise herein granted, Grantee shall furnish during the said twenty (20) year period, the City of Memphis, without charge therefor, for the use of the City of Memphis on official business only, by transfer to the City four (4) optical fibers in Grantee's main backbone loop (approximately 58 miles and as shown in the attached Exhibit "A"), and in any cable in the public right of way where Grantee is installing 12 or more fibers, and shall furnish to the City of Memphis connecting points at up to 200 locations to the above four (4) optical fibers at locations selected by the City of Memphis and within sixty (60) days of when requested by the City of Memphis. If additional connection points are requested by the City, the City will reimburse Grantee, reasonable expense for those connections. All the previously described connections shall be restricted to splice points which are located at a maximum spacing of one-half (1/2) mile. The type of fibers provided for the City of Memphis shall be equal to the fibers used by Grantee. Grantee shall be responsible for maintenance of the City's four (4) optical fibers up to the point where the City connects, and would assist with problem resolution in the four (4) Optical Fibers.

(B) That as a further consideration for the franchise herein granted, Grantee shall at its own expense provide, furnish, and reserve, and continue to provide, furnish, and reserve, in its overhead or underground system or systems, and in all replacement, additions and extensions thereof, space, crossarms, pins and supports on all poles, and one duct in all conduits, and necessary space in manholes, for the wires, fixtures, and other equipment of the police and fire alarm telephone and telegraph systems of the City of Memphis, as requested from time to time by the City of Memphis.

In order to ensure coordination of City facilities with Grantee's network, Grantee agrees:

- (a) To provide twenty-four (24) hour per day continuous monitoring of the facilities that the City is using in conjunction with Grantee's network; and
- (b) To coordinate design and installation of other network specific requirements the City may have, including maintenance, at Grantee's cost, plus ten percent (10%).

SECTION 21. GENERAL COMPENSATION TO THE CITY.

21.1 General Compensation. The City finds that the public streets, alleys and rights-of-way to be used by Grantee in the operation of its system within the boundaries of the City are valuable, public properties, acquired and maintained by the City at great expense to its taxpayers, and that the grant to Grantee of the use of said public streets, alleys and rights-of-way is a valuable property right, without which the Grantee would be required to invest substantial capital in right-of-way costs and acquisitions; the Grantee agrees to pay to the City as general compensation during each year of this franchise ordinance, an amount equal to five percent (5%) of Gross Revenues for each quarter of a Compensation Year. Grantee shall forward by check or money order an amount equal to the quarterly payment by the fifteenth day of the second calendar month immediately following the close of the calendar quarter for which the payment is calculated. Any necessary prorations shall be made.

21.2. Recalculation at end of Compensation Year. At the end of each compensation year, Grantee shall recalculate the total general compensation actually due. If additional amounts are due the City by Grantee, said amounts shall be paid by the fifteenth (15th) day of the second month of the Compensation Year following the compensation year during which such amounts were originally due. If amounts are found to be due the Grantee by the City, said amounts shall be credited by the fifteenth (15th) day of the second month of the Compensation Year following the Compensation Year during which such amounts were originally due. Any necessary prorations shall be made. The compensation set forth in this section shall be exclusive of and in addition to all special assessments and taxes of whatever nature, including, but not limited to, ad valorem taxes. In the event any quarterly payment is made after noon on the date due, Grantee shall pay a late payment penalty of the greater of: (i) \$100 or (ii) simple interest at ten percent (10%) annual percentage rate of the total amount past due.

Payment of money under this section shall not in any way limit or inhibit any of the privileges or rights of the City, whether under this franchise ordinance or otherwise.

Grantee shall file annually with the Director of Finance and Administration no later than ninety (90) days after the end of the Grantee's fiscal year, an audited statement of revenues (for that year) attributable to the operations of the Grantee's system, within the City pursuant to this franchise ordinance. This statement shall present a detailed breakdown of Gross Revenues and uncollectible accounts for the year. This statement shall be audited by an Independent Certified Public accountant whose report shall accompany the statement.

Any transaction which have the effect of circumventing payment of required franchise fees and/or evasion of payment of franchise fees by non-collection or non-reporting of Gross Revenues, bartering, or any other means which evade the actual collection of revenues for business pursued by Grantee are prohibited.

SECTION 22. ACCOUNTS, RECORDS AND REPORTS.

22.1 Grantee shall keep the City fully informed as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance, operation and repair of Grantee's system, Grantee's accounting methods and procedures in connection therewith, and the recording and reporting by Grantee of all revenues and uncollectibles.

22.2 Grantee shall keep complete and accurate books of account and records of its business and operations pursuant to this franchise ordinance in accordance with generally accepted accounting principles, subject to approval by the City. If required by the City or the FCC, Grantee shall use the system of accounts and the forms of books, accounts, records, and memoranda prescribed by the FCC in 47 CFR Part 32 or its successor and as may be further described herein. The City may require the keeping of additional records or accounts which are reasonably necessary for purposes of identifying, accounting for, and reporting gross revenues and uncollectibles for purposes of Section 21 hereof. Grantee shall keep its books of account and records in such a way that breakdowns of revenues are available by type of service within the City.

In order to determine the Gross Revenues received by the Grantee for those categories identified in Section 2.12, Grantee agrees that on the same date that payment is made, as provided in Section 21, it will file with the Director of Finance and Administration a sworn copy of a report in a form acceptable to the City, in sufficient detail to itemize

revenues from each of the categories identified in Section 2.12. It is agreed that the report will not require such detail that will divulge proprietary information. The City may, if it sees fit, have the books and records (including those books and records that may divulge proprietary information) of Grantee examined by a representative of said City to ascertain the correctness of the reports agreed to be filed herein.

22.3 Grantee shall report to the City such other information relating to Grantee as the City may consider useful and shall comply with the City's determination of forms for reports, the time for reports, the frequency with which any reports are to be made, and if reports are to be made under oath.

22.4 Grantee shall provide the City with access at reasonable times and for reasonable purposes, to examine, audit, review and/or obtain copies of the papers, books, accounts, documents, maps, plans and other records of Grantee pertaining to this franchise ordinance. Grantee shall fully cooperate in making available its records and otherwise assisting in these activities.

22.5 The City may, at any time, make inquiries pertaining to Grantee's operation of its System within City. Grantee shall respond to such inquiries on a timely basis.

22.6 The City agrees not to utilize any of the information that it receives by operation of this section for any reason other than to confirm compliance with the terms of this franchise and further agrees that it shall not disclose any information to any third party unless it is required by law to do so.

22.7 Grantee shall provide the City with notices of all petitions, applications, communications and reports submitted by Grantee to the FCC, Securities and Exchange Commission and the Tennessee Public Service Commission or their successor agencies, relating to any matters affecting the use of public streets, alleys and public rights of way and/or the telecommunications operations authorized pursuant to this franchise ordinance. Upon written request from the City, Grantee shall provide the City with copies of all such documentation.

SECTION 23. TERM OF FRANCHISE.

23.1 Term. Upon execution of a franchise agreement between the City and Grantee, a franchise shall be in full force and effect for a term and period of twenty (20) years, ending on the anniversary date of the franchise

23.2 Adjustment of Compensation. Commencing July 1, 2000 and on every fifth (5th) anniversary date thereafter, the City hereby reserves the right to establish in good faith, the amount, nature and terms of compensation (other than Initial Compensation) to be paid by Grantee for use of the public rights-of-way during the remaining term of this franchise. Any adjustment to compensation shall become effective on the first day of the next succeeding calendar quarter. The terms of any such compensation shall be reflected in a master amending ordinance affecting all then existing telecommunication franchises or in an ordinance amending this franchise. Any adjustment to compensation shall be non-discriminatory as to other telecommunication franchises and reasonable. No such amendment may take effect except by duly enacted ordinance of the City.

23.3 Dispute Resolution. If Grantee shall in good faith maintain that the amount, terms or nature of any adjustment to compensation approved by the City Council pursuant to Section 23.2 is excessive or unreasonable, given the value of the privileges granted under this Ordinance and Grantee's franchise, Grantee shall, within ten (10) days of such determination, file with the Chairman of the City Council a statement identifying the reasons why the adjusted compensation is excessive or unreasonable. In the event that the City Council does not reconsider and change its adjustment to compensation within thirty (30) days of such adjustment, Grantee shall have the right to make a demand for arbitration in writing to the City Attorney within thirty (30) days after such anniversary date. In such event, the City and Grantee shall each appoint an arbitrator and a third arbitrator shall be appointed by the arbitrators so appointed. Each arbitrator shall have at least five (5) years of experience in the field of rights-of-way procurement. Pursuant to the then current rules of the American Arbitration Association, or any successor organization, an arbitration shall be held as expeditiously as possible and the question to be answered by the arbitrators shall be:

"Is the Adjusted Compensation adjusted by the City excessive or unreasonable, taking into account the value of the privileges granted to Grantee, both present and future, and the charges required by municipalities in comparable urban areas for similar rights-of-way?"

Unless the majority of the arbitrators shall decide the foregoing question in the affirmative, Grantee shall be bound to pay the Adjusted Compensation requested by the City, retroactive to the applicable anniversary date. If a majority of the arbitrators shall decide the foregoing question in the affirmative, then the City shall withdraw the proposed adjustment to compensation, and Grantee shall continue paying the compensation previously in effect.

SECTION 24. EXTENSION OF TERM.

If, on the expiration date, Grantee shall not be in default under the franchise, and if neither party has notified the other of its intent to terminate the franchise on or before the expiration date, then the terms of this franchise shall be deemed extended on an interim basis until terminated, renewed or renegotiated. Said interim extension period shall not extend beyond a date sixty (60) days after the expiration date, after which date the franchise shall be considered terminated and all rights of the Grantee to use the public rights-of-way to provide telecommunications services shall cease.

SECTION 25. RENEWAL.

At any time during the last year of the franchise, Grantee may request the City to enter into negotiations toward renewing or extending this franchise. The exercise by Grantee of this option shall not bind the City as to acceptance of any particular terms or renewal of the rights granted by the franchise. Any proposed renewal, extension or modification of the franchise is subject to the Council's approval, modifications or rejection in its sole discretion.

Upon expiration of the twentieth (20) year of the franchise, the City shall have the right, at its election, to:

- a. Renew or extend the franchise for an additional period, as agreed by the City and Grantee;
- b. Invite additional franchise applications or proposals; or
- c. Allow the Franchise to terminate without further action.

It is a condition to the grant of this Franchise that the City shall have the right to exercise these options.

SECTION 26. ASSIGNMENT OR LEASE OF FRANCHISE.

Neither the franchise, the assets held by Grantee under this franchise ordinance, nor any rights or privileges of Grantee under this franchise ordinance. Grantee's system capacity, or allowance of access to Grantee's system, either separately or collectively, shall be sold, resold, assigned, transferred or conveyed by Grantee to any other person, firm, corporation, affiliate or entity, without the prior written consent of the City by ordinance of the Council. No such sale, assignment, transfer or conveyance by Grantee shall be approved by the Council for one year after the execution of a franchise agreement, unless such sale, assignment, transfer or conveyance is to another City franchisee or licensee, and the Council determines such sale, assignment, transfer or conveyance is in the best interest of the City and its citizens. Should the Grantee sell, assign, transfer, convey or otherwise dispose of any of its rights or its interests under this franchise ordinance, or attempt to do so, in violation of this requirement to obtain prior consent, the City may revoke this franchise for default, in which event all rights and interest of the Grantee shall cease and no purported sale, assignment, transfer or conveyance shall be effective.

Plant and facilities owned by Grantee located within public property shall never be leased or subleased to a provider or reseller of similar services for the purpose of serving the reseller's own customers ("Reseller"), except for the purpose of directly serving Grantee's end-user customers (including but not limited to hotels, motels, hospitals and buildings with shared tenant services) unless such Reseller has obtained a license or franchise from the City to be a Reseller of telecommunication services and remains in good standing as a licensee or franchisee; provided, however, but not limited to, access services from interexchange or long distance carriers is not prohibited.

SECTION 27. VIOLATIONS AND CURE PROVISIONS.

If the City has reason to believe that Grantee is in violation of this Ordinance, the City shall notify Grantee in writing of the violation, setting forth the nature of such violation. Within ten (10) days of receipt of such notice, Grantee shall respond in writing to provide

explanation or documentation to support that the violation did not occur. Grantee shall be allowed thirty (30) days to cure violations after written notice is received from the City, unless prevented from doing so for reasons beyond control of Grantee.

Upon evidence being received by the City that any violation of this franchise ordinance, any City Charter provisions or any ordinances lawfully regulating Grantee in the construction and operation of this system is occurring, or has occurred, the City shall cause an investigation to be made. If the City finds that such a violation exists or has occurred, the Grantee shall take appropriate steps to comply with the terms of this franchise ordinance and any lawful regulation. Should Grantee fail to comply, after the above-stated notice and opportunity to cure, then the City may take any action authorized by law, including revocation or repeal of the franchise or a suit in court to compel compliance. If, in any such proceeding, default is finally established, Grantee shall be required to pay to the City the reasonable expenses incurred in the prosecution of such suit and all the City's damages and costs (including attorney fees); provided, however, the preceding sentence shall be inapplicable unless its provisions may be lawfully enforced against other telecommunication franchisees of the City.

SECTION 28. REVOCATION AND TERMINATION.

28.1 In addition to all other rights and powers retained by the City under this franchise ordinance or otherwise, the City reserves the right to revoke and terminate any franchise issued by authority of this Ordinance, and all rights and privileges of Grantee hereunder shall cease in the event of substantial breach, subject to reasonable notice and opportunity to cure, of its terms and conditions. A substantial breach of Grantee shall include, but shall not be limited to, the following:

- (1) Grantee's violation of any material provision of the franchise ordinance or any material rule, order or regulation of the City made pursuant to this franchise ordinance;
- (2) Grantee's failure to properly compensate the City as required in this franchise ordinance;
- (3) Grantee's attempt to evade any material provision of the franchise ordinance or to practice any fraud or deceit upon the City or upon Grantee's end-user Customers or interexchange carriers;

- (4) Grantee's failure to be capable of providing actual services to its initial end-user Customers within twelve (12) months from the date of this franchise, unless otherwise authorized by the Council;
- (5) Grantee's failure to complete its construction and provide service as described in Section 6 of this franchise ordinance;
- (6) For failure to file and maintain the bond, security or insurance required under this ordinance;
- (7) Grantee's attempt to sell, transfer, convey or assign any of the rights and privileges granted pursuant to this franchise ordinance within one year after the passage of this ordinance;
- (8) Grantee's attempt to sell, transfer, convey or assign any of the rights and privileges granted pursuant to this franchise ordinance without Council approval;
- (9) Grantee's failure to respond to or comply with reports, audits, statements and other information lawfully requested by the City;
- (10) Grantee's failure to operate its system for six months after it has been constructed; or
- (11) Grantee's material misrepresentation of fact in its application or negotiations during the franchise process; or the conviction of any director, officer, employee or agent of Grantee for the offense of bribery or fraud connected with or resulting from the award of the franchise to Grantee.

28.2. The foregoing shall not constitute a substantial breach if the violation occurs without the fault of Grantee or occurs as a result of circumstances beyond its control. Grantee shall not be excused by mere economic hardship, nor misfeasance or malfeasance of its directors, officers or employees. Revocation or termination shall only take place for material cause.

28.3 Upon expiration of the term of franchise or upon any other termination therefor as provided herein, or by application for approval of transfer of the entire franchise or a majority interest thereof, the City at its election and upon the payment to the Grantee of a price equal to the fair market value of the System shall have the right to purchase and take over the system or interests thereof. In the event of dispute between City and Grantee of what is fair market value, the dispute shall be submitted to arbitration pursuant to provisions of Tennessee Code annotated 23-501, et seq. If City has exercised its option to purchase at fair market value, it shall have the right to assume operation of the system even though the final award has not been made by the arbitrators or as approved by the court.

This right of first refusal for purchase shall also include the right to purchase for the price offered to the Grantee. In the event that there is a contemplated sale of the system or majority interest thereof, or upon the termination as provided herein, or by law, the City must exercise its option within thirty (30) Days. In the event the Grantee has petitioned the City for renewal and renegotiation of its franchise as provided herein the City must exercise its option to purchase the system within thirty (30) days of the requested renewal or renegotiation or at least six (6) months prior to the end of the franchise, whichever is later. Nothing shall prohibit the Grantee in the event of the election of the City to purchase the system from requesting the court to set a reasonable bond of the City to secure the purchase price. The Grantee shall execute such warranty deeds and other instruments as may be necessary.

SECTION 29. SERVICE STANDARDS.

Grantee shall maintain and operate its communications system and business in an efficient manner and shall provide adequate, efficient and reasonable service to its customers in the City. Once it commences operation, Grantee's System shall provide continuous and uninterrupted service throughout the term of the Franchise, unless prevented from doing so by circumstances beyond the control of Grantee.

Grantee shall comply with all applicable federal, state and local laws, rules and regulations, including the Tennessee Public Service Commission.

Grantee shall not practice unjust discrimination regarding rates and services between individual customers or classes of customers.

SECTION 30. PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED.

Grantee shall not make or grant any unreasonable preference or advantage to any person, nor subject any person to any unreasonable prejudice or disadvantage in its exercise of the rights and privileges granted by its franchise; provided, however, that nothing in its franchise shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules, consistent with applicable law, to which any customer coming within such classification would be entitled.

SECTION 31. CONFLICT WITH OTHER LAWS.

Where a provision of this ordinance or Grantee's franchise is in conflict with any state or federal statute or a rule of the Tennessee Public Service Commission or FCC, so that Grantee cannot reasonably comply with both the provisions of this ordinance or franchise and the statute or rule of the Tennessee Public Service Commission or FCC, then Grantee may, after giving the City written notice of its intent to do so and a statement of the legal grounds for its position, comply with such rule instead of the conflicting provision of this ordinance or the franchise until such time as the City obtains a contrary ruling or other relief from an appropriate regulatory agency or court of competent jurisdiction; but Grantee shall comply with all remaining provisions of this ordinance or franchise. Notice of intention not to comply given pursuant to this section shall not relieve Grantee--upon determination that the noncompliance was unlawful or otherwise improper--from the obligation to pay more damages, redo work at Grantee's expense, or otherwise take such steps as may be necessary to restore the City to the position it would have been in if Grantee had remained in compliance with this ordinance and its franchise.

SECTION 32. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES.

Grantee shall, at all times during the term of its franchise, be subject to the provisions of the present Charter of the City, the present ordinances, resolutions, rules, regulations and laws of the City and the State of Tennessee, and to the provisions of any further charter, ordinance, resolution, rule, regulation or law of the City or of the State of Tennessee, so far as they may be applicable.

SECTION 33. TENNESSEE LAW GOVERNS.

In any controversy or dispute under this ordinance, the law of the State of Tennessee shall apply to the extent such law has not been superseded or preempted.

SECTION 34. CITY TAKING PART IN LITIGATION.

The City shall have the right to take part, by intervention or otherwise at its option, in any suit, action, or proceeding instituted by or against Grantee in which any judgment, decree, or order can be rendered affecting the rights, powers or duties of Grantee to do or not to do anything which, by its franchise or this ordinance, it is obligated or may be

required to do or not to do or affecting, such as by foreclosure or lien. Grantee's title to any facility. Grantee shall not object to the City's exercise of such right.

SECTION 35. OFFICE LOCATION.

The Grantee shall maintain an office in the City. Grantee shall always keep and maintain city specific books, records, contracts, accounts, documents, and papers for its operation within the City. All maps, plats, records and inventories and books of the Grantee, insofar as they show values and location of existing property shall be preserved for use, if necessary, in connection with any future valuation of the property of the Grantee.

SECTION 36. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this franchise ordinance is for any reason held invalid or unenforceable by any court of competent jurisdiction, the remainder of this franchise ordinance shall not be affected thereby, but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, term, provision, condition, covenant and portion of this franchise ordinance shall be valid and enforceable to the fullest extent permitted by law.

SECTION 37. FRANCHISE ACCEPTANCE

Grantee, within thirty (30) days after the passage of this Ordinance on third and final reading by the Council of the City of Memphis, shall file with the City of Memphis a written acceptance of this Ordinance, said acceptance to be signed and acknowledged by the president or vice president or other duly authorized officer or person of said Company and attested by the corporate secretary. Said acceptance shall be substantially in the following form:

TO THE MAYOR AND COUNCIL OF THE CITY OF MEMPHIS;

Grantee, a corporation organized and existing under and by virtue of the laws of the State of Tennessee, does hereby accept that certain Ordinance, passed this' ____ day of _____, 1995, entitled, "An ordinance authorizing the issuance of a franchise to Time Warner AxS of Tennessee, L.P., Time Warner of the Mid-South and Time Warner Entertainment Company, L.P. for use of the streets, alleys, thoroughfares, right of way of the

City of Memphis for installation and use of facilities for the operation of fiber optic and other communications services and establishing requirements, terms, conditions and limitations for such franchise.

TIME WARNER AXS OF TENNESSEE, L.P.

BY: _____
TITLE: _____

TIME WARNER OF THE MID-SOUTH

BY: _____
TITLE: _____

TIME WARNER ENTERTAINMENT
COMPANY, L.P.

BY: _____
TITLE: _____

In the event such acceptance is not filed within said time, this Ordinance and the rights and privileges herein granted shall be null and void.

SECTION 38. ENACTMENT CLAUSE.

38.1 Be it further ordained, that this ordinance shall take effect from and after the date it shall have been passed by the council, signed by the chairman of the council, certified and delivered to the office of the mayor in writing by the comptroller, and become effective as otherwise provided by law.

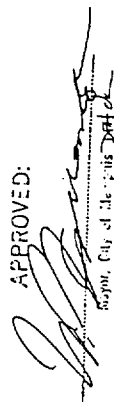
MARY ROSE McCORMICK
Chairman of Council

Attest:

Danny N. Wray, Comptroller
THE FOREGOING ORDINANCE
4288 PASSED
1st Reading 11-1-94
2nd Reading 1-31-95
3rd Reading 5-16-95
Approved 7/2 day from Mr. McCormick,
Chairman of Council

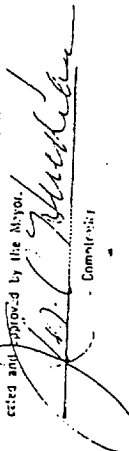
Date Signed: 6-8-95

APPROVED:


Mayor, City of Memphis

Date Signed: 6/15/95

I hereby certify that the foregoing is a true
copy, and said document was adopted by the
Council of the City of Memphis as above indi-
cated and approved by the Mayor.


Commissioner

Draft: September 10, 1992

Ord. 4159

AN AGREEMENT GRANTING A FRANCHISE TO MEMPHIS CATV, ITS SUCCESSORS AND ASSIGNS, TO OWN, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF MEMPHIS, TENNESSEE; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; AND PROVIDING FOR REGULATIONS AND USE OF THE SAID SYSTEM BY SAID CITY AS FOLLOWS.

SECTION 1. Short Title.

This Agreement shall be known and may be cited as the "Memphis CATV Cable Television Franchise Agreement".

SECTION 2. Definitions.

For the purpose of this Agreement, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future and words in the singular number include words in the plural number. Words denoting a particular gender include both genders.

- A. **"ADDITIONAL SERVICE"** shall mean a subscriber service provided by the Grantee in addition to Basic Service.
- B. **"AFFILIATE"** means any entity which owns or controls, or is owned or controlled by, or is under the ownership with Grantee.
- C. **"ANNUAL GROSS REVENUES"** shall mean all revenues received by the Grantee, its Affiliates or Subsidiaries derived from, or in any way related to, the operation of Franchise granted hereunder, from all sources whatever. Annual gross revenues shall not include: (i) the revenue of the Grantee or any other person which is received directly from the sale of any merchandise through any Service distributed over Grantee's broadband telecommunications network (except

that any compensation received by Grantee for the lease or use of channel capacity, the carriage of programming, or any other services rendered by Grantee shall be regarded as annual gross revenues); (ii) taxes imposed by law on Subscribers which the Grantee is obligated to collect, or Franchise fees paid by any person (including, without limitation, Subscribers or Grantee) in connection with the receipt by Grantee of revenues from the operation of the Grantee's broadband telecommunications network (iii) amounts collected by the Grantee from Subscribers on behalf of Leased or Access Channel programmers, other than Affiliates, to the extent that said amounts are passed by the Grantee to said programmers; (iv) any investment income earned by the Grantee on cash or marketable securities; and (v) bad debt write offs. Annual Gross Revenues shall include all revenues received by Grantee in payment for the use of advertising time on the broadband telecommunications network, except for commissions paid to or deducted by a third party who is neither an Affiliate or subsidiary of Grantee.

- D. **"BASIC SERVICE"** shall mean the lowest priced service tier which includes the retransmission of local television broadcast signals.
- E. **"BROADBAND TELECOMMUNICATIONS NETWORK OR NETWORK"** shall mean any network of cables and/or other equipment used for the purpose of transmission of television, radio and/or other signals, either analog, digital, or optical including community television systems, for sale or use by the inhabitants of the City.

- F. **"CABLE SYSTEM OR COMMUNITY TELEVISION SYSTEM"** shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Cable Television Act of 1984, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or (D) any facilities of any electric utility used solely for operating its electric utility systems.
- G. **"CITY"** shall mean the City of Memphis or the area within the territorial corporate limits of the City including future territorial limits.
- H. **"COMMENCE OPERATION"** shall mean that time and date when sufficient distribution facilities have been installed so as to permit the offering of service to at least twenty-five percent (25%) of the dwelling units located in the designated franchise area(s) approved by the City for construction by the Grantee.
- I. **"COUNCIL"** shall mean the City Council of the City of Memphis and any legally appointed or elected successor or agency.

- J. "DATA GRADE" shall mean coded transmission primarily digital in nature.
- K. "DESIGNATED FRANCHISE AREA" shall mean the geographic area within the territorial corporate limits of the City as now or as may be established in the future.
- L. "GRANTEE" shall mean, "Memphis CATV, A Division of Time Warner Cable, A Division of Time Warner Entertainment Company, L.P., and any lawful successor, or Assignee thereof.
- M. "HEAD END" shall mean the land, electronic processing equipment, antennas, tower, building, and other appurtenances normally associated with and located at the starting point of a broadband telecommunications network.
- N. "MAY" is permissive.
- O. "OFFICE" the use of the title of any officer, employee or office shall mean such officer, employee or office of the City of Memphis unless otherwise specifically designated.
- P. "SALE" shall include any sale, exchange, or barter.
- Q. "SHALL" and "MUST" each is mandatory.
- R. "STATE" shall mean the State of Tennessee.
- S. "STREET" shall include all streets, highways, avenues, lanes, alleys, courts, places, squares, curbs, sidewalks or other public ways in the City which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this State.

- T. **"SUBSCRIBER"** shall mean any person, firm, company, corporation or association lawfully receiving basic and/or additional service from the Grantee.
- U. **"SUBSTANTIALLY COMPLETED"** shall mean that time and date when sufficient distribution facilities have been installed so as to permit the offering of service to at least ninety percent (90%) of the dwelling units located in the designated franchise area(s) approved by the City for construction by the Grantee.
- V. **"VIDEO GRADE"** shall mean transmission primarily analog in nature including the picture phase of a television broadcast.

SECTION 3. Grant of Authority.

- A. The subscriber cable T.V. franchise granted hereunder by the City shall not be exclusive and the City reserves the right to grant a similar subscriber cable T.V. franchise at any time, provided that if said other franchise(s), contain(s) provisions imposing lesser obligations on the grantee(s) thereof than are imposed on Grantee hereunder, then the City shall grant a modification of this Franchise providing for equivalent franchise terms in accordance with the provisions of Chapter 59, Sections 7-59-201 through 7-59-208 of the State of Tennessee's law concerning overlapping franchises.
- B. The Grantee's application for a franchise grant hereunder shall be filed with the Chief Administrative Officer, or his designee in accordance with the filing instructions promulgated by the City and shall contain the following written information and provisions:
1. Proposal Bond and Filing Fee -- Each application shall be accompanied by a Twenty-five Thousand Dollars (\$25,000) Proposal Bond and payment

of non-refundable filing fee to the City of One Hundred Dollars (\$100) which sum shall be due and payable concurrently with the submittal of the application.

2. Name and Address of Applicant -- The name and business address of the applicant, date of application and signature of applicant or appropriate corporate officer(s).
3. Description of Proposed Operation -- A general description of the applicant's proposed operation including, but not limited to, designated franchise area(s) applied for; business hours; operating staff; maintenance procedures beyond those required in the ordinance; management and marketing staff complement and procedures; and, if available, the rules of operation for public access.
4. Signal Carriage -- A statement, for informational purposes only, of the television and radio services to be provided, including signals to be received via microwave, satellite, off-the-air and locally originated.
5. Special Services -- A statement setting forth a description of the automated services proposed as well as a description of the production facilities to be made available by the Grantee for the public, municipal, and educational channels required to be made available by the provisions of this franchise or the Federal Communications Commission.
6. Programming Assistance -- A statement describing any assistance in terms of personnel, equipment or additional channel capacity to be designated

for the programming assistance for the public, educational and government access channels.

7. Schedule of Charges -- A statement of the applicant's proposed Schedule of Charges.
8. Applicant Organization -- A statement detailing and setting forth the name and addresses of all persons having a Proprietary or equitable interest in the franchise and in the event the applicant is a corporation, the names and addresses of the officers, directors and shareholders of said corporation together with the number of shares held by each shareholder, both nominal and beneficial owning ten percent (10%) or more of the outstanding shares of the corporation's outstanding stock.
9. Intra-Company Relationships -- A statement describing all intra-company relationships of the applicant, including parent, subsidiary or affiliated companies.
10. Agreements and Understandings -- A statement setting forth all agreements and understandings whether written or oral existing between the applicant and any other person, firm, group or corporation with respect to any franchise awarded hereunder.
11. Financial Statements -- All applicants shall furnish audited financial statements for its two (2) latest fiscal years unless applicant has not been in existence for at least two (2) years, then applicant shall furnish audited financial statements for such lesser periods of time covering the period

that the applicant has been in existence. If the applicant is a partnership, audited financial statements shall include copies of the "U.S. Partnership Return of Income" (IRS Form 1965) for its latest two (2) fiscal years or such lesser period of time that said partnership has been in existence.

12. Financial Projection -- A ten (10) year operations pro forma financial statement which shall include estimated initial and continuing plant investment, annual profit and loss statements detailing income and expenses, annual balance sheets and annual levels of subscriber penetration. Such projections shall also specify the estimated average profit or loss anticipated by the applicant for the first ten (10) year operations period, and shall specify the computations used to provide such estimate. Costs anticipated for voluntary services or contributions shall, if presented, be incorporated in the pro forma financial statements as required in the Ordinance, but shall be separately identified.
13. Financial Support -- An applicant for a new franchise shall supply suitable written evidence from a recognized financing institution addressed both to the applicant and to the City, advising that the applicant's planned operation has been analyzed by the institution and the financing institution is prepared to make the required funds available to applicant if it is awarded a franchise. If the planned operation is to be internally financed, a corporate board resolution or statement from a qualified officer of the applicant shall be supplied authorizing the obtainment and expenditure of

such funds as are required to construct, install and operate the broadband Telecommunications Network contemplated hereunder.

14. Technical Description -- A technical description of the type of network proposed by the applicant including, but not limited to, network configuration (e.g. hub), network capacity, and two-way capability, studio, studio equipment, planned hours of operation and hours of availability, if any, that said studio, studio equipment and network personnel will be made available to educational institutions and other similar agencies.
15. Engineering Statement -- A statement from the applicant's senior technical staff member or consultant advising that he has reviewed the Network Description, the Network Technical Objectives, Performance Measurements, Channels to be Provided, Service Standards, Construction Standards and Conditions of Street Occupancy as set forth in this Ordinance, and that the applicant's planned network and operations thereof will meet all the requirements set forth herein.
16. Existing Franchises -- A statement of existing franchises held by the applicant indicating when the franchises were issued and when the systems were constructed in each respective governmental unit together with the name, address and phone number of a responsible governmental official knowledgeable of the applicant. The statement shall include an explanation and disposition of any lawsuits with respect to operation of a

CATV network in which the applicant or any of its officers or directors or stockholders of ten percent (10%) or more of its voting stock have been involved.

17. Convictions -- A statement as to whether the applicant or any of its officers or directors or holders of ten percent (10%) or more of its voting stock has in the past ten (10) years been convicted of a felony which, in any way, relates to such applicant's ability or competency to perform its obligations under this Ordinance.
18. Operating Experience -- A statement detailing the prior CATV experience of the applicant including that of the applicant's officers, management and staff to be associated with the proposed operation.
19. Franchise Renewal Information -- If an application is for renewal of a franchise, the Proposal must include, in addition to the applicable information required in subsections one (1) through eighteen (18) above:
 - a. A summary of the technical and financial history of the network since the granting of the original franchise.
 - b. A statement and timetable that outlines all proposed changes, expansion or improvements in the network as to services, or technical specifications during the forthcoming five (5) year period.

- c. For informational purposes only, a summary of the programming history of the network since the franchise was granted and a statement of any proposed changes.
20. Additional Requirements -- The initial application for a franchise shall respond specifically, and in sequence, to subsections (1) through (19) of this section and shall be bound separately from any additional information offered by the applicant. Fifteen (15) copies of the application shall be supplied to the City. Supplementary, additional or other information that the applicant deems reasonable for consideration may be submitted at the same time as its applications in the same number of copies. The City may, at its discretion, consider such additional information as part of the application.
21. Supplementation to Applications -- The City reserves the right to require such supplementary, additional or other information that the City deems reasonably necessary for its determinations. Such modifications, deletions, additions or amendments to applications shall be considered only if specifically requested by the City.
22. Police Powers -- This Franchise by the City of Memphis is in the exercise of its Police Powers. There is hereby granted by the City to the Grantee the non-exclusive right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets,

alleys, public ways and public places now, or hereafter, laid out or dedicated, and all extensions or additions of any of same in the City, poles, wires, cables, underground conduits, manholes and other television conductors and fixtures of any sort necessary or incident to the maintenance and operation in the City of a broadband telecommunications network.

SECTION 4. Compliance with Applicable Regulations, Laws and Ordinances.

- A. Consistent with the requirements of the FCC, any amendments of the FCC Rules and Regulations required to be incorporated into a franchise agreement shall be so incorporated within 90 days.
- B. The Grantee shall at all times comply with all applicable laws and regulations of the state and federal governments or any administrative agency thereof, and if in its opinion any state or federal law or regulation shall require the Grantee to perform any service or shall prohibit the Grantee from performing any service which conflicts with the terms of this franchise, the Grantee shall notify the City of Memphis of such conflict for the purpose of seeking any necessary amendments to this franchise agreement. If the City so determines that the franchise is in violation of such state or federal law or regulation, the City shall so notify the Grantee and shall have the right to adopt amendments modifying the effected provisions herein so as to comply with said state or federal law or regulation.

- C. Grantee shall at all times during the life of this franchise be subject to all lawful exercise of the police power by the City and shall comply with any and all Ordinances which the City has adopted or shall adopt applying to the public generally. Further, Grantee shall comply with the provisions of City Code §2-331 to make a good faith effort to employ at least 60% Memphis residents and 32.6% Minorities in the construction of the cable system.

SECTION 5. Grantee Liability-Indemnification-Performance Bond.

- A. It shall be expressly understood and agreed by and between the City and the Grantee that the Grantee shall save the City harmless from all loss sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever arising out of but not limited to copyright infringements and all other damages arising out of the installation, operation or maintenance of the broadband telecommunications network authorized herein whether or not any act or omission complained of is authorized, allowed or prohibited by this Agreement. In the case suit shall be filed against the City, either individually or jointly with the Grantee to recover for any claims or damages, the Grantee upon notice to it by the City, shall defend the City against the action and in the event of a final judgment being obtained against the City, either individually or jointly with the Grantee, solely by the reason of the acts of the Grantee, the Grantee will pay said judgment and all costs and hold the City harmless therefrom.
- B. The City shall notify the Grantee's representative in the City within fifteen (15) days after the presentation of any claim or demand to the City, either by suit or otherwise, made against the City on account of any negligence or contract as aforesaid on the part of the Grantee.

- C. The Grantee shall furnish a Certificate of Insurance showing the City named as additional insured and shall carry and pay the cost of the following liability insurance in support of its undertaking to hold the City harmless from loss sustained on account of the negligence of the Grantee in at least the amounts indicated below for injury to or death of persons and injuries to or destruction of property:
1. \$500,000 for personal injury to any person.
 2. \$1,000,000 for personal injury in any one accident.
 3. \$1,000,000 for property damage in any one accident.
 4. \$2,000,000 for umbrella coverage.
 5. In the event that the Council of the City of Memphis determines that it is necessary for the protection of citizens of the City, they may demand that the amounts of insurance set out above be increased, provided that such increase is reasonable.
 6. The Grantee shall also comply with all provisions of the Workmen's Compensation Law of Tennessee and copies of the above insurance policies shall be filed with the Chief Administrative Officer or his designee.
- D. The Grantee shall pay and by his acceptance of any franchise granted hereunder agrees that he will pay, all reasonable expenses incurred by the City in defending itself with regard to all damages and penalties mentioned in Section 5(A) above. These expenses shall include all reasonable out-of-pocket expenses, such as

consultant or attorney fees, and shall also include the reasonable value of any services rendered by the City Attorney or his staff or any other employees of the City.

- E. The insurance policies mentioned above shall contain an endorsement stating that the policies are extended to cover the liability assumed by the Grantee under the terms of this Ordinance and shall contain the additional endorsement as follows:
1. It is hereby understood and agreed that this policy may not be canceled nor the amount of coverage thereof reduced until thirty (30) days after receipt by the Chief Administrative Officer or his designee by registered mail of a written notice of such intent to cancel or reduce said coverage.
- F. All bonds, policies of insurance or certified copies thereof and written evidence of payment of required premiums shall be filed and maintained with the Chief Administrative Officer or his designee during the term of any franchise granted hereunder.
- G. The City shall have the right to intervene and the Grantee specifically agrees by his acceptance of a franchise hereunder not to oppose such intervention by the City in any suit or proceeding to which the Grantee is a party concerning this franchise and its terms.

SECTION 6. Service Standards.

- A. Office and Telephone Availability: Knowledgeable, qualified company representatives will be available to respond to customer telephone inquiries Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m.

Additionally, the system will establish supplemental hours on week days and weekends that fit the needs of the community.

Under normal operating conditions, telephone answer time, including wait time and the time required to transfer the call, shall not exceed 30 seconds. This standard shall be met no less than 90% of the time as measured on an annual basis.

Under normal operating conditions, the customer will receive a busy signal less than 3% of the total time that the office is open for business.

Customer service centers and bill payment locations will be open for customer transactions Monday through Friday from 8:00 am to 5:00 pm. unless there is a need to modify those hours because of the location or customers served. The system will establish supplemental hours on weekdays and weekends if it would fit the needs of the community.

- B. Installation, Outages and Service Calls: Under normal operating conditions, each of the following four standards will be met no less than 95% of the time as measured on an annual basis.

Standard installations will be performed within seven business days after an order has been placed. A standard installation is one that is within 125' of the existing cable distribution system.

Excluding those situations which are beyond the control of the cable system, the company will respond to any service interruption (area or neighborhood outage affecting 2 or more customers) promptly and in no event later than 24 hours from

the time of initial notification. All other regular service requests will be responded to within 36 hours during the normal work week for that system.

The appointment window alternatives for installations, service calls and other installation activities will be:

1. morning
2. afternoon
3. all day

during normal business hours for that system. The system will schedule supplemental hours during which appointments can be scheduled based on the needs of the community.

If at any time an installer or technician is running late, an attempt to contact the customer will be made and the appointment rescheduled as necessary at a time that is convenient to the customer.

C. Communications, Bills and Refunds: The company will provide written information in each of the following areas at the time of installation and at any future time upon the request of the customer:

1. Product and services offered
2. Prices and service options
3. Installation and service policies
4. How to use the cable service

Bills will be clear, concise and understandable.

Refund checks will be issued promptly, but no later than the customer's next billing cycle following the resolution of the request and the return of the equipment by the company if service has been terminated.

Customers will be notified a minimum of thirty days in advance of any rate or channel change, provided that the change is within the control of the company.

- D. The Grantee shall maintain and operate its broadband telecommunications network in accordance with the rules and regulations as are incorporated herein or may be promulgated by the Federal Communications Commission, the United States Congress, or the State.
- E. The Grantee shall install a bi-directional network having a minimum initial bandwidth of 450 MHz and a minimum reverse bandwidth capability of 25 MHz. Whenever a reverse or feedback circuit is activated at a subscriber location, it shall be installed so as to permit subscriber notification and deactivation.
- F. The Grantee shall provide at least one dedicated, noncommercial public access channel to be made available to local customers of the Grantee at all times on a non-discriminatory basis.
- G. The Grantee shall provide in addition to subsection (F) above, three additional access channels; one for education; one for library use; and one for general city use. For the life of the franchise and from the date these channels are initially made available there shall be no charge unless prohibited by Federal Communications Commission Regulations or, if not prohibited, in accordance with the schedule of charges filed and maintained with the Chief Administrative

Officer or his designee. If the Federal Communications Commission prohibits the number of channels as above set forth, such failure shall not be construed to eliminate the provisions herein requiring the approval of rates or lease of said channels for municipal and educational purposes.

- H. The Grantee shall not be responsible for the production costs of programs prepared for transmission for the channels as set forth in Paragraphs (F) and (G) above.
- I. Whereas local programming is of interest to the City, voluntary efforts to provide a local origination programming channel are encouraged.
- J. In addition, the system shall be equipped with an all channel emergency alert system which shall be made available at no cost to the City for emergency purposes at the request of the Mayor.
- K. The Grantee, whenever it is necessary to interrupt service over the broadband telecommunications network for the purpose of network maintenance, alteration or repair, shall do so at such time as will cause the least amount of inconvenience to its subscribers, and unless such interruption is unforeseen and immediately necessary, it shall give reasonable notice thereof to the affected subscribers.
- L. The Grantee shall provide the City frequency spectrum of 6 MHz upstream and 6 MHz downstream for data transmission by the City. Grantee shall make no transmission or tariff charge to City for said frequency spectrum or the use thereof; however, the City shall first enter into a contract with Grantee with

regard to any such specific use. The contract may also include details of any construction, activation, or on-going maintenance which may be necessary.

SECTION 7. Company Rules.

- A. The Grantee shall have the authority to promulgate such rules, regulations, and terms and conditions governing the conduct of its business as shall be reasonably necessary or incident to the exercise by the Grantee of its rights or as shall be reasonably necessary or incident to the performance by the Grantee of its obligations under this franchise, and to assure an uninterrupted service to each and all of its subscribers and users, provided, however, that such rules or regulations, terms and conditions shall not conflict with the provisions herein or with laws, regulations, ordinances, or rules of the State of Tennessee, the County of Shelby, the City of Memphis or the United States.
- B. One copy of all such rules, regulations, terms and conditions promulgated together with any amendments, additions or deletions thereto, shall be maintained on file with the Chief Administrative Officer or his designee and another copy thereof shall be maintained for public inspection during normal business hours at Grantee's office in the City. No such rule, regulation, term, condition, amendment, or additions and deletions thereto, shall take effect unless and until so filed.

SECTION 8. Condition of Road Occupancy.

- A. The Grantee shall enter into one or more contracts with the City of Memphis and its Light, Gas & Water Division, South Central Bell Telephone and Telegraph

Company or the owner or lessee of any poles or property located within the City to whatever extent such contract or contracts may be expedient and of advantage to the Grantee in furnishing the service under this Franchise to its subscribers and users, but such contract shall not interfere with the obligations of the Memphis Light, Gas & Water Division to furnish service pursuant to Chapter 381 of the Public Acts of 1939 as amended.

- B. The Grantee's system, poles, wires, and appurtenances thereto, shall be located, erected and maintained so as not to endanger or interfere with the safety of the public or interfere with any improvements the City may deem proper to make or as to hinder unnecessarily or obstruct the free use of the streets, alleys, bridges, easements, or other public property.
- C. The Grantee shall not place poles or other fixtures so as to interfere with any gas, electric, telephone fixture, water hydrant or main. All such poles or other fixtures placed in streets shall be placed inside the curb line, and when placed in easements, shall be placed close to the line of the lot abutting on said easement, and only then in such a manner so as not to interfere with the normal travel on said street, public ways, or said easement.
- D. No construction shall commence without the prior approval of the City Engineer. Such approval shall be based upon plans and specifications submitted to him by the Grantee and shall not be unreasonably denied or delayed. All City property will be restored to its original condition at the sole expense of the Grantee.

- E. Whenever the City shall require the relocation or reinstallation of any property of the Grantee in or about any of the streets of the City, it shall be the obligation of the Grantee, upon notice of such requirement, to immediately remove and relocate or reinstall such property as may be deemed necessary by the city engineer to meet the requirements of the City. Such relocation, removal, or reinstallation by the Grantee shall be at the sole expense of the Grantee.
- F. Wherever within the City the electric and telephone utilities are located underground, it shall be the obligation of the Grantee to so locate or cause its property to be located underground. If subsequent to the construction of the broadband telecommunications network the electric and telephone utilities relocate their facilities underground, the Grantee shall in those places and at the same time relocate its property underground. Facilities of the Grantee placed underground at the property owner's request in an area where electric and telephone utilities are aerial, shall be installed at cost with the additional cost of underground expense to be borne by the property owner.
- G. Grantee shall have the authority to trim trees upon and overhanging the streets so as to prevent damage to the broadband telecommunications network and interruption of service. Such tree trimming as may be required will be done in compliance with all reasonable City requirements.
- H. In case of disturbance to a street caused by the Grantee, the Grantee shall at its own cost and expense and in a manner approved by the Director of Public Works

and City Engineer of the City, replace and restore such street in as good a condition as before the work involving such disturbance was done.

- I. The Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of such building. The expense of such temporary removal or raising or lowering of the wires shall be paid by the person requesting the same and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than 48 hours advance notice to arrange for such temporary wire changes. In the event of a disagreement between the Grantee and a holder of a permit, such disagreement will be resolved by the Chief Administrative Officer or his designee.
- J. If at any time, in case of fire or disaster in the City, it shall become necessary in the reasonable judgment of the Mayor or the Chief of the Fire Department to cut or move any of the wires, cables, amplifiers, appliances or appurtenances thereto of the Grantee, such cutting or moving may be done and any repairs rendered necessary thereby shall be made by the Grantee, at its sole expense.
- K. Grantee's work, while in progress, shall be properly performed at all times with suitable barricades, flags, lights, flares, or other devices as required by the City Engineer to protect all members of the public having occasion to use the portion of the streets involved, or adjacent property thereto in accordance with current City policies and practices.

- L. The City reserves the right upon reasonable notice to require the Grantee at his expense to protect, support, temporarily disconnect, relocate or remove from the City's streets any property of the Grantee by reason of traffic conditions, public safety, street construction or vacation, change or establishment of street grade, installation of sewers, drains, water pipes, power or communications lines, tracks or other types of structure of improvements by governmental agencies or any other structures of public improvement. Reasonable notice for this provision of the Ordinance shall be construed to mean at least thirty (30) days except in the case of emergencies where no specific notice period shall be required. In the event of the failure by the Grantee to complete any work required above or any other work required by City law or ordinance within the time established and to the satisfaction of the City, the City may cause such work to be done and the Grantee shall reimburse the City the cost thereof within thirty (30) days after receipt of an itemized list of such cost.

SECTION 9. Approval of Transfer and Right of Acquisition by the City.

Any change in ownership or control of the franchise shall be subject to the approval of the City. The City shall not unreasonably withhold or delay such approval, unless the Grantee fails:

- A. To show to the satisfaction of the City whether the proposed purchaser, transferee, or assignee (the "proposed transferee"), which in the case of a corporation, shall include all officers, directors, employees and all persons having

a legal or equitable interest in five percent (5%) or more of its voting stock, or any of the proposed transferees principals:

1. Has ever been convicted for acts involving moral turpitude including, but not limited to any violation of Federal, State or local law or regulations,
 2. Has ever had a judgement in an action for fraud, deceit or misrepresentation entered against it, her, him or them by any court of competent jurisdiction; or
- B. To establish, to the reasonable satisfaction of the City, the financial solvency of the proposed transferee by submitting all current financial data for the proposed transferee which the Grantee was required to submit in its franchise application, and such other data as the Grantor may reasonably request; or
- C. To establish to the satisfaction of the City that the financial and technical capability of the proposed transferee is such as shall enable it to maintain and operate the cable system for the remaining term of the franchise under the existing franchise terms.
- D. Upon the expiration of the term of the franchise, without a request for renewal, or upon any other termination thereof as provided herein, the City at its election and upon the payment to the Grantee of a price equal to the fair market value, shall have the right to purchase the network or interest thereof. Nothing shall prohibit the Grantee in the event of the election of the City to purchase the system from requesting the court to set a reasonable bond of the City to secure the

purchase price. The Grantee shall execute such warranty deeds and other instruments as may be necessary.

- E. Nothing in this section shall be deemed to prohibit the mortgage or the pledge of the network or any part thereof.
- F. Any such mortgage or pledge shall be subject to and subordinate to the right of the City under this franchise or applicable laws.

SECTION 10. Payments to City.

- A. The Grantee shall, during each year of Operation under the franchise, pay to the City as a franchise fee a sum equivalent to five percent of the annual gross revenues as defined in Section 2C.
- B. The Grantee shall file with the City quarterly reports during the period that the franchise shall be in force, showing the gross revenues during the preceding quarter, together with the appropriate sum due. Said report shall be filed within forty-five (45) days after the quarter as established between the City and the Grantee.
- C. The payment made by the Grantee to the City pursuant to the provisions of this franchise ordinance shall not be considered in the nature of a tax but as a franchise fee.
- D. Any payment to the City required under the terms of this franchise or otherwise shall be a part of the franchise fee if applicable law so provides.

SECTION 11. Rates.

At present, rates charged by the Grantee are not subject to City regulation. In the event of a legal change permitting the City to regulate the rates charged by the Grantee, the City shall regulate rates in accordance with federal law and regulations. There shall be no adjustment in rates for basic service as a result of the capital expenditures made by Grantee to upgrade the system unless such an adjustment is required by federal law or regulations.

SECTION 12. Free Connection and Service.

- A. The Grantee shall provide free of charge one connection and monthly service for such public and non-profit private schools, elementary and secondary, police department, fire department, mayor's office, library, council chambers and offices, county courthouse, police and sheriff director's offices and other City buildings as the City may hereafter designate, provided that such designated locations are within five hundred (500') feet of any existing network cable. The Grantee may charge for footage on the basis of time and material for any such locations beyond the five hundred (500') foot limitation if such connection is designated by the City.
- B. The City reserves the right at its expense to extend service to other areas within such schools, buildings and agencies as it deems desirable without payment of any fee to Grantee.

SECTION 13. Records and Reports.

- A. The Grantee shall keep complete and accurate books of account and records of its business and operations under and in connection with this Franchise. The City at all reasonable hours and upon the giving of reasonable notice to the Grantee or its representatives shall have access to all of the Grantee's plans, contracts and engineering, subscriber and service records relating to the performance of the

Grantee in the City of Memphis under the terms of this franchise. The City or its representatives shall have access at all reasonable hours and upon the giving of reasonable notice to the Grantee to all accounts and records of the Grantee pertaining to revenue for the purpose of ascertaining the correctness of any and all reports filed with the City. The above records, reports or accounts, a copy thereof shall be maintained at all times in the office of the Grantee located in the City.

- B. The Grantee will report to the Chief Administrative Officer or his designee quarterly on the progress of construction until substantial completion of the system.
- C. The Grantee shall file annually with the Chief Administrative Officer or his designee, not later than four (4) months after the end of its fiscal year during which it accepted a franchise hereunder and within four (4) months after the end of each subsequent fiscal year, a copy of its report to his stockholders, and an audited gross receipts letter applicable to its operations under said franchise during the fiscal year or fraction thereof.
- D. If requested by the City, the Grantee shall file with the Chief Administrative Officer or his designee within thirty (30) days of the request, a list of all network "down-time" received or experienced during the past year. All such submitted data shall also include service restoral period. For the purposes of this provision a certified copy of a logbook reflecting all such incidents will suffice.

- E. The Grantee shall file annually, as set forth herein, with the Chief Administrative Officer or his designee not later than four (4) months after the end of its fiscal year during which it accepted a franchise hereunder and within four (4) months after the end of each subsequent fiscal year, a copy of its FCC Certificate of Compliance to the Network Technical Standards.
- F. The Grantee shall file annually with the Chief Administrative Officer or his designee not later than four (4) months after the end of its fiscal year during which it accepted a franchise hereunder and within four (4) months after the end of each subsequent fiscal year the following supplemental information:
1. If a non-public corporation, a list of all current shareholders and bondholders both of record or beneficial. If a public corporation a list of all shareholders who individually or as a concerted group hold five percent (5%) or more of the voting stock of the corporation.
 2. A current list of all Grantee's officers and directors including addresses and telephone numbers.
 3. The names, address and both business and residential phone numbers of the broadband telecommunications network system manager and chief engineer.
 4. One copy of all types of subscriber and user agreements.
 5. Copies of all rules and regulations promulgated by the Grantee during the fiscal year in the conduct of its business.
- G. The Grantee shall file with the City Council Chairman all reports required by this ordinance.

SECTION 14. Term of Franchise.

The Franchise and rights granted by this agreement shall be in effect for a period of 10 years from May 3, 1993 until May 3, 2003. However Grantee shall have the option to extend the Franchise and rights granted by this agreement until May 3, 2008, if, at any time prior to May 3, 2003 Grantee upgrades its network so that the network is capable of providing a minimum of 70 channels of programming to subscribers in the City of Memphis.

SECTION 15. Commencing of Construction.

- A. A Grantee within sixty (60) days after contract with the City of Memphis and its Light, Gas & Water Division, shall apply for such initial right of way permits from appropriate state, county, and Federal officials necessary for the crossing of highways or roads under their respective jurisdiction; shall apply for permission as needed from the Federal Aviation Authority to erect and maintain antennas suitable for the needs of the network and its subscribers or users; and shall apply for whatever other permits as needed that a city, county, state or federal agency or utility may require.
- B. A Grantee, within sixty (60) days after the grant of a franchise hereunder, shall furnish to the City a bond with corporate surety in an amount as determined by the provisions of Section 5, herein payable to the City to insure the performance as required hereunder. The penal amount of said bond shall be adjusted prior to the commencement of construction of designated construction areas B through E to reflect the additional linear miles of network to be installed by the Grantee.

Such bond shall be maintained in effect until substantial completion of construction.

C. A Grantee shall commence construction, if required, of the area as delineated in the particular franchise agreement within the time period required in its particular franchise agreement and such construction shall thereafter be diligently pursued with operations to commence within the time period as required in its particular franchise agreement. Grantee shall rebuild its existing cable system to conform to the requirements of Section 6E in accord with the terms of the proposal which is annexed hereto. Construction shall proceed in stages if so required in a particular franchise agreement unless excused for one or more of the following reasons.

1. Failure to obtain a right or permit of the sort described above required for the construction or installation of some necessary part of the network, but such failure shall not excuse or relieve a Grantee or its surety under the bond unless Grantee can show that it exerted good faith and effort to obtain such right or permit within the allowed time.
2. A war or other national emergency which prevents the Grantee from obtaining materials or instrumentalities for the network or skilled personnel to operate it.
3. A strike or work stoppage affecting construction of the network, a supplier of some component part of the network, termination or interruption of construction by order or regulation of a Federal or State agency or Court,

or any other cause beyond a Grantee's control which, upon application by Grantee, the Council of the City of Memphis may accept as justification for extending the period during which the Grantee shall commence construction of the network.

- D. Within twenty-four (24) months of the commencement of construction, a Grantee shall have substantially completed construction within the meaning set forth in Section 2, Paragraph (U) of this Ordinance of the area as delineated in its particular franchise agreement.
- E. Material failure to comply with any of the foregoing provisions of this section within the time specified shall be grounds for the revocation of the franchise.
- F. The City may, at its discretion, revoke a franchise granted, in the event a Grantee fails to receive the necessary FCC Certification for cause, unless such cause is directly attributable to an action or condition imposed by the City.
- G. Time shall be of the essence of any franchise granted hereunder. A Grantee shall not be relieved of its obligations to comply promptly with any provision of this Ordinance by the failure of the City to enforce prompt compliance.
- H. For a new franchise, within thirty (30) days of the final passage of the franchise, a Grantee shall deposit with a local bank an irrevocable letter of credit in a minimum amount of Ten Million Dollars (\$10,000,000), which amount shall be maintained until substantial completion of construction.

SECTION 16. Publication Costs.

The Grantee shall assume the cost of publication of this franchise agreement and any further amendments thereto as such publication is required by law. A bill for publication cost shall be presented to the Grantee by the appropriate City officials upon the Grantee's filing of its acceptance by letter addressed to the Chief Administrative Officer or his designee within thirty (30) days after the passage of the franchise agreement or any further amendments thereto and the said publication cost shall be paid at that time by the Grantee.

The Grantee shall further assume the costs of publication of any amendments. The Grantee's acceptance of the agreement and any further amendments shall also be by letter to the Chief Administrative Officer or his designee of the City of Memphis within the above prescribed thirty (30) days after passage of the amendment.

SECTION 17. Activities Prohibited.

- A. The Grantee shall not allow the operations of its network to interfere with the television reception of non-subscribers or users of the network, nor shall the operations of the network interfere with, obstruct, or hinder in any manner, the operations of the various utilities serving the residents of the City.
- B. The Grantee, during the period of the franchise, or any of its affiliated, subsidiary, parent organizations, or officers holding five percent (5%) or more of outstanding voting stock of Grantee, shall not, within the corporate limits of the City or within ten (10) miles in any direction, engage in the retail sale, renting, leasing, or repairing of radio or television receivers or any appurtenances thereof. Also, they shall not recommend how or by whom such services should be performed.

- C. Nothing herein is intended to prohibit the Grantee from repairing and servicing convertors or switches which it sells or rents to its customers.
- D. The Grantee shall not as to rates, charges, service facilities, rules, regulations, or in any other respect, make or grant any undue preference or advantage to any subscriber or user or non-subscriber or non-user nor subject any person to prejudice or disadvantage, provided that nothing herein shall prevent the Cable Operator from: conducting promotional campaigns; establishing commercial rates higher than residential rates; providing bulk rate discounts; or from setting rates as necessary to meet competitive market circumstances which may vary from time to time and/or from place to place.

SECTION 18. Limited Purpose.

This Franchise is granted by the Council of the City of Memphis to the Grantee solely for the purpose of using the easements, streets, and highways of the City to construct and operate the Grantee's network and is not intended to convey any copyright or patent privileges whatsoever.

SECTION 19. Minority Programming.

The Grantee agrees, subject to applicable law including, without limitation, The Federal Cable Act, that at least one channel shall be made available for commercial lease to minorities. It is understood that said leased channel is not in lieu of any public access channel required under the FCC Rules and Regulations.

SECTION 20. Local Origination Programming.

- A. The Grantee agrees to be capable of producing local Origination programming when the Grantee has at least 3500 subscribers.

To the extent that the Grantee is willing to provide support for local programming prior to obtaining the above number of subscribers by maintaining a color equipped studio and subject to the approval of the FCC such support shall be designated and provided by the Grantee when stated in the acceptance of this franchise by the Grantee as set forth herein.

The Grantee further agrees that should he desire to support this studio with mobile facilities capable of taping and broadcasting "live" programs of special interest and subject to the approval of the FCC, such support shall be designated and provided by the Grantee when stated in the acceptance of this franchise by the Grantee as set forth herein.

- B. The Grantee agrees that if and when a local origination television studio is constructed by it, that such studio will be constructed within the then existing Corporate limits of the City of Memphis.

SECTION 21. Local Office.

During the term of this franchise, or any renewal thereof, the Grantee shall maintain within the City a local business office.

SECTION 22. Interconnection.

- A. Nothing in this Agreement shall be construed so as to prohibit the Grantee from interconnecting its network with other similar contiguous networks either in the City, county or in other municipalities or states. However, any revenue derived

therefrom shall be equitably allocated in the calculation of annual gross revenues as set forth in Section 2, Paragraph (C) herein.

- B. The Grantee shall, if requested by the City, have conducted a technical and economic feasibility study of any interconnection requested by the City, said study shall be conducted by an independent agency to be chosen by the City. The results of said study shall be presented to the City and, if the study shows such interconnection to be feasible, the Grantee shall, if so instructed by the City, accomplish said interconnection, each entity affected utilizing the same channel assignment in the event that the study indicates technical feasibility only, the City may elect, at its sole discretion, to arrange for compensation to be paid to the Grantee, in an amount sufficient to assure an economic "break even" by the Grantee and so order the interconnection. In the event that the study fails to show technical feasibility, the Grantee shall have no further responsibility for accomplishing the interconnection.

SECTION 23. Network Technical Standards.

- A. Technical Objectives and Measurements
1. The City reserves the right to:
 - a. modify the objectives from time to time;
 - b. require additional tests at specific terminal locations to deal with problems of the network; and
 - c. conduct its own inspections of the network on its own motion at any time during normal business hours with reasonable advance

notice. In addition, the City may add requirements and inspections to conform to local codes and procedures and to protect the safety and convenience of public ways.

2. Grantee shall equip itself with a copy of these rules and standards and make them available both to its employees and to the public at any time during normal business hours.
3. Grantee shall file with the City an annual certificate of compliance to the objectives set forth herein. Such certificates of compliance shall be signed by and include a statement of the experience and qualifications of the person or persons performing said measurements.
4. The network shall be so designed, installed and operated so as to meet the following general requirements:
 - a. capable of continuous twenty-four (24) hour daily operation;
 - b. capable of operating over an outdoor temperature range of -40° F. to +140° F. without catastrophic failure or irreversible performance changes over variations in supply voltages from 105 to 130 volts AC.;
 - c. capable of meeting all objectives set forth herein over an outdoor temperature range of +10° F. over variations in supply voltages from 105 to 130 volts AC;
 - d. operated in such a manner so as to avoid causing interference with the reception of off-the-air signals by non-subscribers to the cable

system. The responsibility for immediately remedying such interference should it occur shall rest with the network.

- e. designed, installed and operated so as to comply with all applicable rules and regulations promulgated by the Federal Communications Commission;
- f. designed, installed and operated so as to assure the delivery to all subscribers of standard color and monochrome signals on the FCC designated Class I cable television channels without noticeable picture degradation or visible evidence of color distortion or other forms of interference directly attributable to the performance of the network.

5. The following objectives apply to network performance on the FCC designated Class I cable television channels as measured at any subscriber terminal with a matched termination:

- a. the signal level as measured at the visual carrier frequency for each cable television channel shall not be less than 1000 Q (microvolts) across a 75 ohm terminating impedance.

The aural carrier level shall be maintained between 13 and 17 decibels below its associated visual carrier level.

- b. the visual carrier signal level on each television channel shall be maintained within:

- (1) Nine (9) decibels of its minimum value; and
 - (2) Three (3) decibels of the signal level of any visual carrier within six (6) MHz nominal frequency separation; and
 - (3) Twelve (12) decibels of the visual carrier signal level on any other cable television channel.
- c. network frequency response as measured at any subscriber terminal shall not vary by more than +2db over the six (6) MHz bandwidth of any VHF television channel or corresponding portion of the FM or midband frequency spectrums.
- d. The corrected ratio of visual signal level to system noise shall not be less than 40 decibels. This requirement is applicable only to the following signals:
- (1) each off-air signal carried by a cable system serving subscribers within the Grade B contour for that signal; or
 - (2) each off-air signal which is first picked up within its Grade B contour; or
 - (3) each signal which is received by the network via microwave or other similar form of transmission.
- e. Cross-modulation as measured at any visual carrier frequency from the network input to any subscriber terminal shall not exceed -48db [as defined by NCTA Standard 002.0207] measured at approximately 70° F.

- f. The ratio of visual carrier signal level to the RMS amplitude of any coherent disturbances such as inter-modulation products, network generated or induced co-channel signals or discrete frequency interfering signals shall not be less than 46 decibels except for officially assigned offset carriers for which it shall not be less than 36 decibels.
- g. The terminal isolation between subscribers shall not be less than 18 decibels.
- h. The hum modulation as measured over the usable frequency bandwidth from the cable system input to any subscriber terminal shall not exceed three percent (3%). The percent of hum modulation is defined as the ratio expressed in percent of the average level of the directed signal to one-half (1/2) the indicated peak to peak AC hum.
- i. Radiation from a broadband telecommunications network shall be in accordance with the limits set forth in Part 76, Section 76.605(a)(12) of the FCC Rules and Regulations.
- j. Proposed specifications for FCC designated Class II, III and IV channels shall be submitted by the cable system operator to the City as the use of these channels is implemented.

SECTION 24. Measurements.

- A. Test procedures used in verification of the performance criteria set forth herein shall be in accordance with good engineering practice. The test procedures included herein are done so as a guide and should be made under conditions which reflect network performance during normal network operations. As there is more than one technically acceptable method for performing many of the measurements, the technique and equipment utilized if different from those set forth below shall be fully described in the annual certificate filed with the City.
- B. All measurements shall be made from the beginning or input to the network (head end) to at least three (3) subscriber locations, at least two (2) of which shall be "worst case" locations (network extremities). Measurements shall be made at 75 ohms with the loss of the set transformer indicated where applicable for each test location. The measurements are to be made as follows:
1. Network frequency response measurements may be made with a calibrated signal generator, variable attenuator and a frequency selective voltmeter. [If an accurately calibrated field strength meter is used for the measurements, its date of calibration shall be indicated on the certificate of compliance filed with the City.] All TV signals except for ALC, AGC, or ASC pilot carriers may be disconnected during this test. With all automatic gain control amplifiers in the section under tests set to their normal operating mode, the signal generator shall be connected to the input of the network and set for a CW signal at the desired frequency and

location. With the meter and variable attenuator connected in series to the subscriber terminal under test, the signal level shall be measured and recorded. Measurements shall then be made in a similar manner for all video carrier frequencies on the network at the levels normally carried on the system.

2. Network signal-to-noise measurements may be made in accordance with NCTA Standard 005.0669 or with a calibrated signal generator and frequency selective voltmeter connected as described in (1) above. The signal generator shall be tuned, in turn, to the visual carrier frequency of each FCC designated Class I cable television channel and the signal level at the subscriber terminal recorded. The meter should then be tuned to a frequency 25 MHz above the visual carrier frequency of each channel described above and with the signal generator disabled, the indicated noise level recorded and corrected by an appropriate factor representing the ratio of 4 MHz to the noise bandwidth of the frequency selective voltmeter.
3. The network cross-modulation measurement shall be performed in accordance with NCTA Standard 002.0267 or by using a calibrated signal generator having controllable modulation, a detector and an oscilloscope [If a field Strength meter with an internal detector is utilized, a description of the meter shall be included on the certificate of compliance filed with the City.] After connecting the Signal generator to the lowest Standard

VHF television frequency input terminal at the network's "head end" signal combiner, its output shall be set for an unmodulated Signal identical in frequency and level to that of the signal normally Present at that point. The signals of all other channels normally carried on the network shall be fed into the combiner at their normal levels. After connecting the field Strength meter to the subscriber terminal, it shall be tuned to the visual carrier frequency of the channel under test and with the oscilloscope the modulation level may be read directly from the scope, recorded and corrected by appropriate factors for temperature and measurement technique.

4. the amplitude of the discrete frequency interferences within a cable television channel may be determined with a frequency selective voltmeter, calibrated for adequate accuracy.
5. the terminal isolation between any two subscriber terminals may be measured by applying a signal of predetermined amplitude from a signal generator to one terminal in the reverse direction and measuring the amplitude of the signal at the other terminal with a frequency selective voltmeter.
6. the network hum modulation may be measured at each visual carrier frequency on the network using a calibrated signal generator, a detector and an oscilloscope. The signal generator shall be connected, and the level and frequency set at their normal levels. With the detector and

oscilloscope connected to the subscriber terminal, the average level of the detected signal and the peak-to-peak AC hum will be indicated on the oscilloscope. The percent of hum modulation for this purpose is defined as the ratio expressed in percent of the average level of the detected signal to one-half (1/2) the indicated peak-to-peak AC hum.

7. network radiation measurements shall be made in accordance with the procedures established in Part 76, Section 76.690 (b)-(1)-(b)(5) of the FCC Rules and Regulation for Cable Television Systems.

SECTION 25. Construction Standards.

- A. All construction practices shall be in accordance with standard utilities practices as detailed in the Edison Electrical Institute Publication E3 governing joint-use agreement and in the United States Department of Commerce, National Bureau of Standards, Handbook Number 18, "Safety Rules for the Installation and Maintenance of Electrical Supply and Communications Lines", and all state and local codes where applicable.
- B. All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the applicable portions of the current edition of the National Electric Code.
- C. Antenna supporting structures (towers) shall be designed for the proper loading zone as specified in Electronics Industry Association's R.S.-22 specifications.
- D. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal

Aeronautical Agency, governing the erection and operation of supporting structures or TV towers and all other applicable local or state codes and regulations.

- E. Nothing in this Agreement shall be construed so as to authorize the Grantee to construct, erect or operate and maintain in the City, new poles and underground conduits where existing poles and conduits are servicing the area. The Grantee does have the right, however, to construct, erect, operate and maintain poles and underground conduits where none exist, or if poles and conduits are unavailable to the Grantee on reasonable terms at the time the Grantee seeks to install his network subject to the provisions of this franchise.
- F. Nothing in this Agreement shall be construed so as to relieve the Grantee of the obligation of placing underground the network facilities in areas presently served or to be served in the future by underground utility facilities. The Grantee shall abide by the requirement of the City in regard to the installation of such facilities as set forth in Section 8, Paragraph (F) herein.
- G. All construction and installation of all Grantee's network facilities shall be subject to the prior approval of the City and to inspection and supervision of such construction and installation as set forth in Section 8.

SECTION 26. Regulatory Jurisdiction and Procedures.

- A. The City shall have continuing regulatory jurisdiction and supervision over the operation of any franchise granted hereunder.

- B. The continuing regulatory jurisdiction of the City may be exercised by a Broadband Telecommunications Regulatory Board that the City may establish. The Board hereafter established may have the following responsibilities and duties, and such other responsibilities and duties that the City Council may, from time to time, assign to it.
1. Resolving disputes or disagreements between subscribers and the Grantee after investigation, should the subscriber and the Grantee not first be able to resolve their dispute or disagreement, and issuing its decision or findings which shall be binding upon the Grantee except as such decision or findings shall be appealed, as outlined in said ordinance and/or to a court of competent jurisdiction. All subscriber complaints, disputes or disagreements shall be directed to the Chief Administrative Officer or his designee who shall sit as a member of the Board.
 2. Reviewing and auditing reports submitted to the City as required hereunder and other such correspondence as may be submitted to the City concerning the operation of the Broadband Telecommunications Network. To assure that all reports required under the Ordinance are completed and filed. To review the rules and regulations set by the Grantee under the provisions of Section 7 herein.
 3. Coordinate and publicize the implementation and usage of the governmental and educational channels provided hereunder.

4. Work with the public and the media to assure that all tariffs and rules pertinent to the operation of the Broadband Telecommunications Network in the City of Memphis are made available for inspection by the public at reasonable hours and upon reasonable request.
 5. Confer and coordinate with the Grantee on the interconnection of the City's Broadband Telecommunications Network with other similar networks.
- C. Any inquiry, proceeding or other action on this franchise required to be taken by the City Council in regard to the broadband telecommunications network including but not limited to a change of subscriber or user rates or application therefor, shall, in addition to any requirements upon the City Council sitting as a rate-making body, be taken only after thirty (30) days notice of said proposed action, inquiry, or proceeding is published in a local newspaper having general circulation and a copy of said notice is served upon the Grantee. The Grantee shall be given thirty (30) days notice and shall have an opportunity to respond in writing and/or at the hearing pursuant to the rules of the City Council and members of the public shall have an opportunity to respond or comment in writing on the proposed action and appear at said hearing, said inquiry, proceeding or hearing, however, shall be set no later than ninety (90) days after notice to the Grantee. The public notice required by this section shall state clearly the action or proposed action to be taken, the time provided for response, including response by the public, the person or persons in authority to whom such

responses shall be addressed and such other procedures as may be specified by the City Council. If a hearing is to be held, the public notice shall give the date and time of such hearing and whether public participation will be allowed. The Grantee is a necessary party to any hearing conducted in regard to its operation. The provision for a hearing within ninety (90) days is mandatory unless such time is extended by agreement between the City and the Grantee.

SECTION 27. State of the Art.

- A. At all times, the Grantee's broadband telecommunications network shall be maintained current with the "state of the art". The City may, at its sole discretion, require the Grantee to comply with the provisions of this section. State of the Art shall mean that level of technical performance, capacity and capability which has been developed and demonstrated in the cable industry to be operationally workable and profitable.
- B. The Grantee shall not provide any new service to subscribers without prior notification of the Chief Administrative Officer or his designee. Fees, rates on charges for the proposed new services, shall be filed with the Chief Administrative Officer or his designee at least thirty (30) days prior to their effective date.

SECTION 28. Validity and Acceptance of Franchise, Irrevocable Letter of Credit.

- A. The Grantee shall not be excused from complying with any of the terms and conditions of the Franchise by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

The Grantee expressly acknowledges that it accepts the Franchise relying upon its own investigation and understanding of the power and authority of the City to grant the Franchise. The Grantee, by acceptance, acknowledges that it has not been induced to accept this Franchise by any understanding or promise or other statement, whether verbal or written by or on behalf of the City or by any other third person concerning any terms and conditions of the Franchise not expressed herein.

The Grantee further acknowledges by acceptance of the Franchise that it has carefully read the terms and conditions.

- B. Within thirty (30) days after the passage of an ordinance granting a franchise to a Grantee and any amendments thereto, Grantee shall file a written acceptance of the franchise and any amendments thereto and shall also file all necessary insurance certificates and the bond if required under the terms of its franchise. This action shall signify the validity of the franchise and any amendments thereto.

SECTION 29. Revocation of the Franchise.

- A. In addition to any other right and powers which the City may have, the City reserves as an additional separate and distinct power the right to terminate this franchise and all rights and privileges of the Grantee hereunder.
- B. The right to terminate any franchise granted hereunder and rescind all rights and privileges associated therewith shall be on the following grounds:

1. Substantial noncompliance by the Grantee with any material provision of this Ordinance or of any supplemental written agreement entered into by and between the City and the Grantee.
 2. The Grantee becomes insolvent, enters into receivership or liquidation, files an application for bankruptcy or for composition of creditors, is unable or unwilling to pay his debts as they mature or is in financial difficulty of sufficient consequence so as to jeopardize the continued operation of the network.
 3. Substantial and willful violation by the Grantee of any Federal Communications Commission order or ruling or the order or ruling of any other governmental body having jurisdiction over the Grantee unless the Grantee is lawfully contesting the legality or applicability of such order.
- C. In the event that the City shall decide to terminate for cause a franchise granted hereunder, it shall give the Grantee ninety (90) days written notice of its intention to terminate and stipulate the cause. If during the ninety (90) day period the cause shall be cured to the satisfaction of the City, the City may, at its discretion declare the notice to be null and void. In any event before a franchise may be terminated, the Grantee must be provided with an opportunity to be heard before the City Council. Such hearing to be in accordance with the procedures specified in Section 26(C).
- D. Nothing shall prohibit the City from imposing lesser sanctions or censures as set forth herein for willful or repeated violations of material provisions of this

franchise, and in the case of continuing violations each day in which such violation continues shall be considered a separate and distinct violation.

E. For willful violation of material provisions of this ordinance, the following penalties may be imposed by the Board:

1. For failure to file required plans or information \$ 50 per day
2. For failure to comply with reasonable orders of the Broadband Telecommunications Regulatory Board. \$100 per day
3. For failure to commence construction or operation in accordance with the provisions of Section 15 herein. \$200 per day
4. For failure to complete construction in accordance with the provisions of Section 15 herein. \$200 per day
5. No penalty shall be assessed pending a resolution of any appeal by the Grantee to the City Council or a court of competent jurisdiction.
6. In the event that the Board shall decide to impose a penalty for a violation of this Ordinance or of a reasonable Board Order, it shall give the Grantee ten (10) days written notice of its intention to do so. If, during the ten (10) day period, the violation shall be corrected to the satisfaction of the Board, the Board may, at its discretion, declare the notice to be null and void.

F. The penalties imposed pursuant to this section are in addition to and not in lieu of the rights of the City pursuant to Section 5 of this franchise.

SECTION 30. Expiration and Renewal of Franchise.

- A. Upon the termination of the franchise without a renewal the Grantee shall if permitted by the City, abandon said property in place or enter upon the public ways and public places of the City for the purpose of removing therefrom all of its plants, structures and equipment and shall promptly remove all of its facilities and equipment from the premises of all subscribers at a time convenient to both the Grantee and the subscriber.
- B. In so removing such plants, structures and equipment, the Grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave such public ways and places in as good condition as that prevailing prior to the Grantee's removal of its equipment and appliances without affecting, altering or disturbing in any way the electric distribution or telephone cables, wire or attachments on any poles. The City Engineer or his appointee shall inspect and approve the condition of such public ways and public places and cables, wire, attachments, and poles after removal. In the event of dispute of the City Engineer's opinion, the Grantee or any other person may request a public hearing before the City. Liability insurance and indemnity provided for herein shall continue in full force and effect during the entire period of removal.

SECTION 31. Additional Rights of the City in the Franchise.

- A. The City reserves the right during the life of any franchise granted hereunder, to install and maintain free of charge upon the poles and conduits of the grantee any wire and pole fixtures necessary for municipal networks such as

police and fire, on the condition that such installations and maintenance thereof do not interfere with the Operations of the Grantee.

- B. The City reserves the right during the life of any franchise granted hereunder, to inspect and supervise all construction or installation work performed subject to the provisions of this Ordinance to insure compliance with the terms of the Ordinance as set forth in Sections (8) and (25) herein.
- C. Nothing in this Agreement shall in any way or to any extent be construed to waiver, modify, or abridge the City's right of eminent domain in respect to the Grantee.
- D. Any right or power in, or duty impressed upon any officer, employee, department or board of the City shall be subject to transfer by the Council or by law to any other officer, employee, department or board of the City.
- E. The City shall have the first right of refusal to set any poles and underground conduits required, The Grantee shall require permission from the City before constructing or erecting any new poles or underground conduit.
- F. The City reserves all rights not specifically granted herein.

SECTION 32. Designated Franchise Area.

- A. The Grantee shall provide service to all dwelling units located within the designated franchise area. If extraordinary circumstances exist for the denial of such service, such denial may be reviewed by the CAO upon request of the subscriber and all alternatives for the provision of service shall be reviewed.

- B. In the event the continued use of a street within a designate construction area is denied for any reason, the Grantee will make every reasonable effort to provide service by alternate route.

SECTION 33. Annexation Policy.

- A. The Grantee of any franchise hereunder shall within one (1) year of notification by the City, extend its broadband telecommunications network so as to provide service to substantially all residents of:
1. Newly annexed areas of the City contiguous to its designate franchise area(s) not then served by a broadband telecommunications network.
 2. If within (a) above there exists or it is planned that there will be less than thirty (30) dwelling units per mile, the Grantee may collect an amount equivalent to one-half (50%) of the costs of such extension on a prorated basis from each subscriber or user connected to such extension.

SECTION 34. Subscriber Agreement.

A copy of all types of standard agreements with subscribers used by the Grantee shall be provided to the Chief Administrative Officer or his designee within thirty (30) days of their request.

SECTION 35. Subscribers Antennas.

The Grantee shall not require the removal, or offer to remove any existing Subscriber's antenna as a condition or provision of service. However, a subscriber may request in writing the removal of any existing antenna. Such written request forms that may be developed or used by the Grantee shall state that the removal of an antenna is not a condition of providing service and

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these forms shall be subject to approval of the City before use. Also the Grantee shall demonstrate to the satisfaction of the City, adequate insurance protection for the removal of subscriber antennas.

SECTION 36. Subscriber Refunds.

If any subscriber or user of the Grantee of less than one (1) year terminates Service because of Grantee's failures to render service to such subscriber of a type and quality provided for herein or if service to a subscriber or user of less than one (1) year is terminated without good cause, or if the Grantee ceases to operate the broad band telecommunications network authorized herein for any reason except termination or expiration of a franchise granted hereunder, the Grantee shall refund to such Subscriber of less than one (1) year amount equal to the installation and connection charges paid by him in accordance with the schedule of charges filed with and approved by the City. In no event shall the Grantee be required to refund the monthly charge except as he may express a willingness to do so.

SECTION 37. Filing and Communications with Regulatory Agencies.

The Grantee shall simultaneously file and maintain with the Chief Administrative Officer or his designee copies of all petitions, applications, and communications transmitted by the Grantee to, or received by the Grantee from all federal and State regulatory commissions or agencies having competent jurisdiction to regulate the Operations of any broadband telecommunications network authorized hereunder.

SECTION 41. Ordinances Repealed.

All sections of Ordinances No. 496 and No. 1623 are hereby repealed.

SECTION 42. Severability.

If any section, paragraph, sentence, clause, phrase, or portion of this Agreement is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not effect the validity of the remaining portions hereof.

SECTION 43. Enacting Clause.

BE IT FURTHER ORDAINED, that this Ordinance take effect from and after the date it shall have been passed by the Council, certified and delivered to the Office of the Mayor in writing by the Comptroller, and become effective as otherwise provided by law.

CITY OF MEMPHIS

By _____

revised
Dr. Hanner
2/15/93

THE FOREGOING ORDINANCE

4159 PASSED1st Reading 1/12/932nd Reading 1/19/933rd Reading 1/26/93Approved Jack Sammons
Chairman of CouncilDate Signed: 2-4-93

APPROVED:

[Signature]
Mayor, City of Memphis

Date Signed: 2-17-93

I hereby certify that the foregoing is a true copy, and said document was adopted by the Council of the City of Memphis as above indicated and approved by the Mayor.

[Signature]
Comptroller

Item # 31
Commissioner Gates

Prepared By Paul Robinson
Approved By Paul Robinson
Asst. County Attorney

ORDINANCE NO. 134

AN ORDINANCE GRANTING A FRANCHISE TO MEMPHIS CATV, ITS SUCCESSORS AND ASSIGNS, TO OWN, OPERATE AND MAINTAIN A BROADBAND TELECOMMUNICATIONS SYSTEM IN SHELBY COUNTY, TENNESSEE

WHEREAS, Memphis CATV, a division of Time Warner Cable, a division of Time Warner Entertainment Company, L.P. desires to obtain from Shelby County Government a franchise to own, operate and maintain a Broadband Telecommunications System in the unincorporated areas of Shelby County, Tennessee; and

WHEREAS, Memphis CATV, has executed an Agreement known as the "Memphis CATV Franchise Agreement" which Agreement is attached hereto as Exhibit "A" and incorporated herein by reference as though set forth herein verbatim, (the "New Agreement"); and

WHEREAS, This body, the Board of County Commissioners of Shelby County, Tennessee has reviewed the terms, conditions and provisions of the New Agreement and deem the terms, conditions and provisions of the New Agreement to be within the best interest of the citizens of the County of Shelby and deem the New Agreement acceptable; and

WHEREAS, Prior to entering into the New Agreement it is necessary to terminate the previous Agreement known as the Memphis CATV, Inc. Cable Television Franchise Resolution ("the Old Agreement"); and

WHEREAS, Memphis CATV, and Shelby County Government are in agreement that the Old Agreement should be terminated by the consent of the parties thereto; and

WHEREAS, On or about November 4, 1992, Memphis CATV, Inc. transferred and assigned part of its franchise rights under the Old Agreement to Millington CATV, Inc. (hereinafter "Millington"); and

31) WHEREAS, Millington received by assignment from Memphis CATV, Inc. and approval by resolution of the Shelby County Board of Commissioners enacted March 9, 1983, a franchise grant (hereinafter the "Millington Franchise Resolution") allowing Millington to service the area of Shelby County commencing at the Fayette County line and the Loosahatchie River; thence west along the Loosahatchie River to the Mississippi River to the Tipton County Line, east along the Tipton County Line to the Fayette County Line, and south along the Fayette County Line to the Loosahatchie River (the "designated area"); and

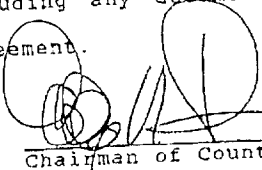
WHEREAS, Millington wishes to continue to operate under the terms and conditions of that grant of franchise.

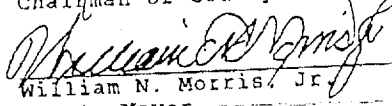
NOW, THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, That; All provisions of the Old Agreement less and except the grant of franchise to Millington to carry on its operations in the designated area are hereby terminated.

BE IT FURTHER ORDAINED, That Millington shall continue to operate under the terms and conditions of the Millington Franchise Resolution for the remainder of the terms of the Old Agreement, which term shall expires January 26, 1996.

BE IT FURTHER ORDAINED, That the New Agreement is hereby approved.


BE IT FURTHER ORDAINED, That the Mayor of Shelby County is hereby authorized to execute the New Agreement and any other documents attendant thereto, including any documents necessary for the termination of the Old Agreement.


Chairman of County Commission


William N. Morris, Jr.
County Mayor

Date: Jan 6, 1994

ATTEST:


Emily L. Phillips
Deputy Clerk of County Commission

First Reading November 25, 1993
Second Reading December 6, 1993
Adopted
Third Reading December 20, 1993
30/46-47

Item # 31
Commissioner Gates

Prepared By Paul Robinson
Approved By Paul Robinson
Asst. County Attorney

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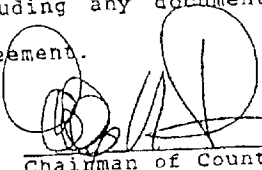
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William N. Morris, Jr.
County Mayor

Date: Jan 6, 1994

ATTEST:


Deputy Clerk of County Commission

First Reading November 25, 1993
Second Reading December 6, 1993
Adopted
Third Reading December 20, 1993
30/46-47

**CABLE
VISION**

SHELBY COUNTY

MEMPHIS CATV

**BROADBAND
TELECOMMUNICATIONS
SYSTEM**

FRANCHISE ORDINANCE

1993

BROADBAND TELECOMMUNICATIONS SYSTEM

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AN AGREEMENT GRANTING A FRANCHISE TO MEMPHIS CATV, A DIVISION OF TIME WARNER CABLE, A DIVISION OF TIME WARNER ENTERTAINMENT COMPANY, L.P., ITS SUCCESSORS AND ASSIGNS, TO OWN, OPERATE AND MAINTAIN A BROADBAND TELECOMMUNICATIONS SYSTEM IN SHELBY COUNTY, TENNESSEE: SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; AND PROVIDING FOR REGULATIONS AND USE OF THE SAID SYSTEM BY SAID COUNTY AS FOLLOWS.

SECTION 1. Short Title.

This Agreement shall be known and may be cited as the "Memphis CATV Franchise Agreement".

SECTION 2. Definitions.

For the purpose of this Agreement, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future and words in the singular number include words in the plural number. Words denoting a particular gender include both genders.

- A. "ADDITIONAL SERVICE" shall mean a subscriber service provided by the Grantee in addition to Basic Service.
- B. "AFFILIATE" means any entity which owns or controls, or is owned or controlled by, or is under the ownership with Grantee.
- C. "ANNUAL GROSS REVENUES" shall mean all revenues received by the Grantee, its Affiliates or Subsidiaries derived from, or in any way related to, the operation of Franchise granted hereunder, from customers located in unincorporated Shelby County. Annual gross revenues shall not include: (i) the revenue of the Grantee or any other entity which is received directly from the sale of any merchandise through any Service distributed over Grantee's broadband

telecommunications network (except that any compensation received by Grantee for the lease or use of channel capacity, the carriage of programming, or any other services rendered by Grantee shall be regarded as annual gross revenues); (ii) taxes imposed by law on Subscribers which the Grantee is obligated to collect, or Franchise fees paid by any person (including, without limitation, Subscribers or Grantee) in connection with the receipt by Grantee of revenues from the operation of the Grantee's broadband telecommunications network (iii) amounts collected by the Grantee from Subscribers on behalf of Leased or Access Channel programmers, other than Affiliates, to the extent that said amounts are passed by the Grantee to said programmers; (iv) any investment income earned by the Grantee on cash or marketable securities; and (v) bad debt write offs. Annual Gross Revenues shall include all revenues received by Grantee in payment for the use of advertising time on the broadband telecommunications network, except for commissions paid to or deducted by a third party who is neither an Affiliate or subsidiary of Grantee.

- D. "BASIC SERVICE" shall mean the lowest priced service tier which includes the retransmission of local television broadcast signals.
- E. "BROADBAND TELECOMMUNICATIONS NETWORK" OR "NETWORK" shall mean any network of cables and/or other equipment used for the purpose of transmission of television, radio, data, audio and/or other signals, either analog, digital, or optical including cable television signals, for sale or use by the inhabitants of the County.

- F. **"CABLE SYSTEM" OR "COMMUNITY TELEVISION SYSTEM"** shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Cable Television Act of 1984, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or (D) any facilities of any electric utility used solely for operating its electric utility systems.
- G. **"COMMENCE OPERATION"** shall mean that time and date when sufficient distribution facilities have been installed so as to permit the offering of service to at least twenty-five percent (25%) of the dwelling units located in the designated franchise area(s) approved by the County for construction by the Grantee.
- H. **"COMMISSION"** shall mean the Board of County Commissioners of Shelby County, or any legally appointed or elected successor or agency.

- I. "COUNTY" shall mean unincorporated areas of the County of Shelby, a Political Subdivision of the State of Tennessee.
- J. "DATA GRADE" shall mean coded transmission primarily digital in nature.
- K. "DESIGNATED FRANCHISE AREA" shall mean the geographic area of unincorporated Shelby County, outside of any municipalities located within the County.
- L. "GRANTEE" shall mean, "Memphis CATV, A Division of Time Warner Cable, A Division of Time Warner Entertainment Company, L.P.", and any lawful successor, or Assignee thereof.
- M. "HEAD END" shall mean the land, electronic processing equipment, antennas, tower, building, and other appurtenances normally associated with and located at the starting point of a broadband telecommunications network.
- N. "MAY" is permissive.
- O. "OFFICE" the use of the title of any officer, employee or office shall mean such officer, employee or office of Shelby County unless otherwise specifically designated.
- P. "SALE" shall include any sale, exchange, or barter.
- Q. "SHALL" and "MUST" each is mandatory.
- R. "STATE" shall mean the State of Tennessee.
- S. "STREET" shall include all streets, highways, avenues, lanes, alleys, courts, places, squares, curbs, sidewalks or other public ways in the County which have

been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this State.

T. "SUBSCRIBER" OR "CUSTOMER" shall mean any person, firm, company, corporation or association lawfully receiving basic and/or additional service from the Grantee.

U. "SUBSTANTIALLY COMPLETED" shall mean that time and date when sufficient distribution facilities have been installed so as to permit the offering of service to at least ninety percent (90%) of the dwelling units located in the designated franchise area(s) approved by the County for construction by the Grantee.

V. "VIDEO GRADE" shall mean transmission primarily analog in nature including the picture phase of a television broadcast.

SECTION 3. Grant of Authority.

A. The franchise granted hereunder by the County shall not be exclusive and the County reserves the right to grant a similar franchise at any time, provided that if said other franchise(s), contain(s) provisions imposing lesser obligations on the grantee(s) thereof than are imposed on Grantee hereunder, then the County shall grant a modification of this Franchise providing for equivalent franchise terms in accordance with the provisions of Chapter 59, Sections 7-59-201 through 7-59-208 of the State of Tennessee's law concerning overlapping franchises.

B. The Grantee's application for a franchise grant hereunder shall be filed with the Chief Administrative Officer, or his designee in accordance with the filing instructions

promulgated by the County and shall contain the following written information and provisions:

1. Proposal Bond and Filing Fee -- Each application shall be accompanied by a Twenty-five Thousand Dollars (\$25,000) Proposal Bond and payment of non-refundable filing fee to the County of One Hundred Dollars (\$100) which sum shall be due and payable concurrently with the submittal of the application.
2. Name and Address of Applicant -- The name and business address of the applicant, date of application and signature of applicant or appropriate corporate officer(s).
3. Description of Proposed Operation -- A general description of the applicant's proposed operation including, but not limited to, designated franchise area(s) applied for; business hours; operating staff; maintenance procedures beyond those required in the ordinance; management and marketing staff complement and procedures; and, if available, the rules of operation for public access.
4. Signal Carriage -- A statement, for informational purposes only, of the television and radio services to be provided, including signals to be received via microwave, satellite, off-the-air and locally originated.
5. Special Services -- A statement setting forth a description of the automated services proposed as well as a description of the production facilities to be made available by the Grantee for the public, municipal,

- and educational channels required to be made available by the provisions of this franchise or the Federal Communications Commission.
6. Programming Assistance -- A statement describing any assistance in terms of personnel, equipment or additional channel capacity to be designated for the programming assistance for the public, educational and government access channels.
 7. Schedule of Charges -- A statement of the applicant's proposed Schedule of Charges.
 8. Applicant Organization -- A statement detailing and setting forth the name and addresses of all persons having a Proprietary or equitable interest in the franchise and in the event the applicant is a corporation, the names and addresses of the officers, directors and shareholders of said corporation together with the number of shares held by each shareholder, both nominal and beneficial owning ten percent (10%) or more of the outstanding shares of the corporation's outstanding stock.
 9. Intra-Company Relationships -- A statement describing all intra-company relationships of the applicant, including parent, subsidiary or affiliated companies.
 10. Agreements and Understandings -- A statement setting forth all agreements and understandings whether written or oral existing between the applicant and any other person, firm, group or corporation with respect to any franchise awarded hereunder.

11. Financial Statements -- All applicants shall furnish audited financial statements for its two (2) latest fiscal years unless applicant has not been in existence for at least two (2) years, then applicant shall furnish audited financial statements for such lesser periods of time covering the period that the applicant has been in existence. If the applicant is a partnership, audited financial statements shall include copies of the "U.S. Partnership Return of Income" (IRS Form 1965) for its latest two (2) fiscal years or such lesser period of time that said partnership has been in existence.
12. Financial Projection -- A ten (10) year operations pro forma financial statement which shall include estimated initial and continuing plant investment, annual profit and loss statements detailing income and expenses, annual balance sheets and annual levels of subscriber penetration. Such projections shall also specify the estimated average profit or loss anticipated by the applicant for the first ten (10) year operations period, and shall specify the computations used to provide such estimate. Costs anticipated for voluntary services or contributions shall, if presented, be incorporated in the pro forma financial statements as required in the Ordinance, but shall be separately identified.
13. Financial Support -- An applicant for a new franchise shall supply suitable written evidence from a recognized financing institution addressed both to the applicant and to the County, advising that the applicant's planned operation has been analyzed by the institution and the financing institution

is prepared to make the required funds available to applicant if it is awarded a franchise. If the planned operation is to be internally financed, a corporate board resolution or statement from a qualified officer of the applicant shall be supplied authorizing the obtainment and expenditure of such funds as are required to construct, install and operate the broadband Telecommunications Network contemplated hereunder.

14. Technical Description -- A technical description of the type of network proposed by the applicant including, but not limited to, network configuration (e.g. hub), network capacity, and two-way capability, studio, studio equipment, planned hours of operation and hours of availability, if any, that said studio, studio equipment and network personnel will be made available to educational institutions and other similar agencies.
15. Engineering Statement -- A statement from the applicant's senior technical staff member or consultant advising that he has reviewed the Network Description, the Network Technical Objectives, Performance Measurements, Channels to be Provided, Service Standards, Construction Standards and Conditions of Street Occupancy as set forth in this Ordinance, and that the applicant's planned network and operations thereof will meet all the requirements set forth herein.
16. Existing Franchises -- A statement of existing franchises held by the applicant indicating when the franchises were issued and when the systems

were constructed in each respective governmental unit together with the name, address and phone number of a responsible governmental official knowledgeable of the applicant. The statement shall include an explanation and disposition of any lawsuits with respect to operation of a CATV network in which the applicant or any of its officers or directors or stockholders of ten percent (10%) or more of its voting stock have been involved.

17. Convictions -- A statement as to whether the applicant or any of its officers or directors or holders of ten percent (10%) or more of its voting stock has in the past ten (10) years been convicted of a felony which, in any way, relates to such applicant's ability or competency to perform its obligations under this Ordinance.
18. Operating Experience -- A statement detailing the prior CATV experience of the applicant including that of the applicant's officers, management and staff to be associated with the proposed operation.
19. Franchise Renewal Information -- If an application is for renewal of a franchise, the Proposal must include, in addition to the applicable information required in subsections one (1) through eighteen (18) above:
 - a. A summary of the technical and financial history of the network since the granting of the original franchise.
 - b. A statement and timetable that outlines all proposed changes, expansion or improvements in the network as to services, or

technical specifications during the forthcoming five (5) year period.

- c. For informational purposes only, a summary of the programming history of the network since the franchise was granted and a statement of any proposed changes.

20. Additional Requirements -- The initial application for a franchise shall respond specifically, and in sequence, to subsections (1) through (19) of this section and shall be bound separately from any additional information offered by the applicant. Fifteen (15) copies of the application shall be supplied to the County. Supplementary, additional or other information that the applicant deems reasonable for consideration may be submitted at the same time as its applications in the same number of copies. The County may, at its discretion, consider such additional information as part of the application.
21. Supplementation to Applications -- The County reserves the right to require such supplementary, additional or other information that the County deems reasonably necessary for its determinations. Such modifications, deletions, additions or amendments to applications shall be considered only if specifically requested by the County.
22. Police Powers -- This Franchise by the Shelby County is in the exercise of its Police Powers. There is hereby granted by the County to the Grantee the non-exclusive right and privilege to construct, erect, operate

and maintain in, upon, along, across, above, over and under the streets, alleys, public ways and public places now, or hereafter, laid out or dedicated, and all extensions or additions of any of same in the County, poles, wires, cables, underground conduits, manholes and other television conductors and fixtures of any sort necessary or incident to the maintenance and operation in the County of a broadband telecommunications network.

SECTION 4. Compliance with Applicable Regulations, Laws and Ordinances.

- A. Consistent with the requirements of the FCC, any amendments of the FCC Rules and Regulations required to be incorporated into a franchise agreement shall be so incorporated within 90 days or as required by FCC Rules.
- B. The Grantee shall at all times comply with all applicable laws and regulations of the state and federal governments or any administrative agency thereof, and if in its opinion any state or federal law or regulation shall require the Grantee to perform any service or shall prohibit the Grantee from performing any service which conflicts with the terms of this franchise, the Grantee shall notify Shelby County of such conflict for the purpose of seeking any necessary amendments to this franchise agreement. If the County so determines that the franchise is in violation of such state or federal law or regulation, the County shall so notify the Grantee and shall have the right to adopt amendments modifying the effected provisions herein so as to comply with said state or federal law or regulation.

- C. Grantee shall at all times during the life of this franchise be subject to all lawful exercise of the police power by the County and shall comply with any and all Ordinances which the County has adopted or shall adopt applying to the public generally.

SECTION 5. Grantee Liability-Indemnification-Performance Bond.

- A. It shall be expressly understood and agreed by and between the County and the Grantee that the Grantee shall save the County harmless from all loss sustained by the County on account of any suit, judgment, execution, claim or demand whatsoever arising out of but not limited to copyright infringements and all other damages arising out of the installation, operation or maintenance of the broadband telecommunications network authorized herein whether or not any act or omission complained of is authorized, allowed or prohibited by this Agreement. In the case suit shall be filed against the County, either individually or jointly with the Grantee to recover for any claims or damages, the Grantee upon notice to it by the County, shall defend the County against the action and in the event of a final judgment being obtained against the County, either individually or jointly with the Grantee, solely by the reason of the acts of the Grantee, the Grantee will pay said judgment and all costs and hold the County harmless therefrom.
- B. The County shall notify the Grantee's representative in the County within fifteen (15) days after the presentation of any claim or demand to the County, either by suit or otherwise, made against the County on account of any negligence or contract as aforesaid on the part of the Grantee.

C. Grantee shall furnish a Certificate of Insurance showing the County named as the additional insured and shall carry and pay the cost of the following liability insurance in support of its undertaking to hold the County harmless from loss on account of the negligence of the Grantee in at least the amounts set out below for injury to or death of persons and injuries to or destruction of property:

- 1,000,000 for personal injury to any person.
- 1,000,000 for personal injury in any one accident.
- 1,000,000 for property damage in any one accident.
- 1,000,000 for umbrella coverage.

Whenever it is determined by a majority vote of the Board of Commissioners of Shelby County that it is necessary for the protection of citizens of the County, the Board may demand that the amounts of insurance set out above be increased, provided that such increase is reasonable.

The Grantee shall also comply with all provisions of the Workmen's Compensation Law of Tennessee and copies of the above insurance policy shall be filed with the Chief Administrative Officer or his designee.

The County shall pay and by his acceptance of any franchise granted hereunder shall pay, all reasonable expenses incurred by the County in connection with and regard to all damages and penalties mentioned in Section 10-1-101. Expenses shall include all reasonable out-of-pocket expenses, including attorney's fees.

such as consultant or attorney fees, and shall also include the reasonable value of any services rendered by the County Attorney or his staff or any other employees of the County.

- E. The insurance policies mentioned above shall contain an endorsement stating that the policies are extended to cover the liability assumed by the Grantee under the terms of this Ordinance and shall contain the additional endorsement as follows:
1. It is hereby understood and agreed that this policy may not be canceled nor the amount of coverage thereof reduced until thirty (30) days after receipt by the Chief Administrative Officer or his designee by registered mail of a written notice of such intent to cancel or reduce said coverage.
- F. All bonds, policies of insurance or certified copies thereof and written evidence of payment of required premiums shall be filed and maintained with the Chief Administrative Officer or his designee during the term of any franchise granted hereunder.
- G. The County shall have the right to intervene and the Grantee specifically agrees by his acceptance of a franchise hereunder not to oppose such intervention by the County in any suit or proceeding to which the Grantee is a party concerning this franchise and its terms.

SECTION 6. Service Standards.

- A. Office and Telephone Availability: Knowledgeable, qualified company representatives will be available to respond to customer telephone inquiries Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m.

Additionally, the system will establish supplemental hours on week days and weekends that fit the needs of the community.

Under normal operating conditions, telephone answer time, including wait time and the time required to transfer the call, shall not exceed 30 seconds. This standard shall be met no less than 90% of the time as measured on an annual basis.

Under normal operating conditions, the customer will receive a busy signal less than 3% of the total time that the office is open for business.

Customer service centers and bill payment locations will be open for customer transactions Monday through Friday from 8:00 am to 5:00 pm. unless there is a need to modify those hours because of the location or customers served. The system will establish supplemental hours on weekdays and weekends if it would fit the needs of the community.

- B. Installation, Outages and Service Calls: Under normal operating conditions, each of the following standards will be met no less than 95% of the time as measured on an annual basis.

Standard installations will be performed within seven business days after an order has been placed. A standard installation is one that is within 125' of the existing cable distribution system.

Excluding those situations which are beyond the control of the cable system, the company will respond to any service interruption (area or neighborhood outage affecting 2 or more customers) promptly and in no event later than 24 hours from

the time of initial notification. All other regular service requests will be responded to within 36 hours during the normal work week for that system.

The appointment window alternatives for installations, service calls and other installation activities will be:

1. morning
2. afternoon
3. all day

during normal business hours for that system. The system will schedule supplemental hours during which appointments can be scheduled based on the needs of the community.

If at any time an installer or technician is running late, an attempt to contact the customer will be made and the appointment rescheduled as necessary at a time that is convenient to the customer.

C. Communications, Bills and Refunds: The company will provide written information in each of the following areas at the time of installation and at any future time upon the request of the customer:

1. Product and services offered
2. Prices and service options
3. Installation and service policies
4. How to use the cable service

Bills will be clear, concise and understandable.

Refund checks will be issued promptly, but no later than the customer's next billing cycle following the resolution of the request and the return of the equipment by the company if service has been terminated.

Customers will be notified a minimum of thirty days in advance of any rate or channel change, provided that the change is within the control of the company.

- D. The Grantee shall maintain and operate its broadband telecommunications network in accordance with the rules and regulations as are incorporated herein or may be promulgated by the Federal Communications Commission, the United States Congress, or the State.
- E. The Grantee shall install a bi-directional network having a minimum initial bandwidth of 450 MHz and a minimum reverse bandwidth capability of 25 MHz. Whenever a reverse or feedback circuit is activated at a subscriber location, it shall be installed so as to permit subscriber notification and deactivation.
- F. The Grantee shall provide at least one dedicated, noncommercial public access channel to be made available to local customers of the Grantee at all times on a non-discriminatory basis.
- G. The Grantee shall provide in addition to subsection (F) above, three additional access channels; one for education; one for library use; and one for general governmental use. For the life of the franchise and from the date these channels are initially made available there shall be no charge unless prohibited by Federal Communications Commission Regulations or, if not prohibited, in accordance with the schedule of charges filed and maintained with the Chief Administrative

Officer or his designee. If the Federal Communications Commission prohibits the number of channels as above set forth, such failure shall not be construed to eliminate the provisions herein requiring the approval of rates or lease of said channels for municipal and educational purposes. The Grantee shall not be responsible for the production costs of programs prepared for transmission for the channels as set forth in Section 6, Paragraphs (F) and (G).

- H. The channels required in Section 6, Paragraphs (F) and (G) may be shared between Shelby County and the City of Memphis until such time as additional channel space is required in accordance with Section 39.
- I. Whereas local programming is of interest to the County, voluntary efforts to provide a local origination programming channel are encouraged.
- J. In addition, the system shall be equipped with an all channel emergency alert system which shall be made available at no cost to the County for emergency purposes at the request of the Mayor.
- K. The Grantee, whenever it is necessary to interrupt service over the broadband telecommunications network for the purpose of network maintenance, alteration or repair, shall do so at such time as will cause the least amount of inconvenience to its subscribers, and unless such interruption is unforeseen and immediately necessary, it shall give reasonable notice thereof to the affected subscribers.
- L. The Grantee shall provide the County frequency spectrum of 6 MHz upstream and 6 MHz downstream for data transmission by the County. Grantee shall make no transmission or tariff charge to County for said frequency spectrum or the use

thereof; however, the County shall first enter into a contract with Grantee with regard to any such specific use. The contract may also include details of any construction, activation, or on-going maintenance which may be necessary.

SECTION 7. Company Rules.

- A. The Grantee shall have the authority to promulgate such rules, regulations, and terms and conditions governing the conduct of its business as shall be reasonably necessary or incident to the exercise by the Grantee of its rights or as shall be reasonably necessary or incident to the performance by the Grantee of its obligations under this franchise, and to assure an uninterrupted service to each and all of its subscribers and users, provided, however, that such rules or regulations, terms and conditions shall not conflict with the provisions herein or with laws, regulations, ordinances, or rules of the State of Tennessee, the County of Shelby, the City of Memphis or the United States.
- B. One copy of all such rules, regulations, terms and conditions promulgated together with any amendments, additions or deletions thereto, shall be maintained on file with the Chief Administrative Officer or his designee and another copy thereof shall be maintained for public inspection during normal business hours at Grantee's office in the County. No such rule, regulation, term, condition, amendment, or additions and deletions thereto, shall take effect unless and until so filed.

SECTION 8. Condition of Road Occupancy.

- A. The Grantee shall enter into one or more contracts with the Memphis Light, Gas & Water Division, South Central Bell Telephone and Telegraph Company or the owner or lessee of any poles or property located within the County to whatever extent such contract or contracts may be expedient and of advantage to the Grantee in furnishing the service under this Franchise to its subscribers and users, but such contract shall not interfere with the obligations of the Memphis Light, Gas & Water Division to furnish service pursuant to Chapter 381 of the Public Acts of 1939 as amended.
- B. The Grantee's system, poles, wires, and appurtenances thereto, shall be located, erected and maintained so as not to endanger or interfere with the safety of the public or interfere with any improvements the County may deem proper to make or as to hinder unnecessarily or obstruct the free use of the streets, alleys, bridges, easements, or other public property.
- C. The Grantee shall not place poles or other fixtures so as to interfere with any gas, electric, telephone fixture, water hydrant or main. All such poles or other fixtures placed in streets shall be placed inside the curb line, and when placed in easements, shall be placed close to the line of the lot abutting on said easement, and only then in such a manner so as not to interfere with the normal travel on said street, public ways, or said easement.
- D. No underground construction shall commence without the prior approval of the County Engineer, as evidenced by the issuance of a Road Cut Permit and the

payment of fees required by County Resolution #16, dated January 25, 1982, and attached hereto as Exhibit 1 and incorporated herein by reference. Such approval shall be based upon plans and specifications submitted to him by the Grantee and shall not be unreasonably denied or delayed. All County property will be restored to its original condition at the sole expense of the Grantee.

- E. Whenever the County shall require the relocation or reinstallation of any property of the Grantee in or about any of the streets of the County, it shall be the obligation of the Grantee, upon notice of such requirement, to immediately remove and relocate or reinstall such property as may be deemed necessary by the city engineer to meet the requirements of the County. Such relocation, removal, or reinstallation by the Grantee shall be at the sole expense of the Grantee.
- F. Wherever within the County the electric and telephone utilities are located underground, it shall be the obligation of the Grantee to so locate or cause its property to be located underground. If subsequent to the construction of the broadband telecommunications network the electric and telephone utilities relocate their facilities underground, the Grantee shall in those places and at the same time relocate its property underground. Facilities of the Grantee placed underground at the property owner's request in an area where electric and telephone utilities are aerial, shall be installed at cost with the additional cost of underground expense to be borne by the property owner.

- G. Grantee shall have the authority to trim trees upon and overhanging the streets so as to prevent damage to the broadband telecommunications network and interruption of service. Such tree trimming as may be required will be done in compliance with all reasonable County requirements.
- H. In case of disturbance to a street caused by the Grantee, the Grantee shall at its own cost and expense and in a manner approved by the Director of Public Works and County Engineer of the County, replace and restore such street in as good a condition as before the work involving such disturbance was done.
- I. The Grantee shall, on the request of any person holding a building moving permit issued by the County, temporarily raise or lower its wires to permit the moving of such building. The expense of such temporary removal or raising or lowering of the wires shall be paid by the person requesting the same and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than 48 hours advance notice to arrange for such temporary wire changes. In the event of a disagreement between the Grantee and a holder of a permit, such disagreement will be resolved by the Chief Administrative Officer or his designee.
- J. If at any time, in case of fire or disaster in the County, it shall become necessary in the reasonable judgment of the Mayor or the Chief of the Fire Department to cut or move any of the wires, cables, amplifiers, appliances or appurtenances thereto of the Grantee, such cutting or moving may be done and any repairs rendered necessary thereby shall be made by the Grantee, at its sole expense.

- K. Grantee's work, while in progress, shall be properly performed at all times with suitable barricades, flags, lights, flares, or other devices as required by the County Engineer to protect all members of the public having occasion to use the portion of the streets involved, or adjacent property thereto in accordance with current County policies and practices.
- L. The County reserves the right upon reasonable notice to require the Grantee at his expense to protect, support, temporarily disconnect, relocate or remove from the County's streets any property of the Grantee by reason of traffic conditions, public safety, street construction or vacation, change or establishment of street grade, installation of sewers, drains, water pipes, power or communications lines, tracks or other types of structure of improvements by governmental agencies or any other structures of public improvement. Reasonable notice for this provision of the Ordinance shall be construed to mean at least thirty (30) days except in the case of emergencies where no specific notice period shall be required. In the event of the failure by the Grantee to complete any work required above or any other work required by County law or ordinance within the time established and to the satisfaction of the County, the County may cause such work to be done and the Grantee shall reimburse the County the cost thereof within thirty (30) days after receipt of an itemized list of such cost.

SECTION 9. Approval of Transfer and Right of Acquisition by the County.

Any change in ownership or control of the franchise shall be subject to the approval of the County. The County shall not unreasonably withhold or delay such approval, unless the Grantee fails:

- A. To show to the satisfaction of the County whether the proposed purchaser, transferee, or assignee (the "proposed transferee"), which in the case of a corporation, shall include all officers, directors, employees and all persons having a legal or equitable interest in five percent (5%) or more of its voting stock, or any of the proposed transferees principals:
 - 1. Has ever been convicted for acts involving moral turpitude including, but not limited to any violation of Federal, State or local law or regulations,
 - 2. Has ever had a judgement in an action for fraud, deceit or misrepresentation entered against it, her, him or them by any court of competent jurisdiction; or
- B. To establish, to the reasonable satisfaction of the County, the financial solvency of the proposed transferee by submitting all current financial data for the proposed transferee which the Grantee was required to submit in its franchise application, and such other data as the Grantor may reasonably request; or
- C. To establish to the satisfaction of the County that the financial and technical capability of the proposed transferee is such as shall enable it to maintain and operate the cable system for the remaining term of the franchise under the existing franchise terms.

- D. Upon the expiration of the term of the franchise, without a request for renewal, or upon any other termination thereof as provided herein, the County at its election and upon the payment to the Grantee of a price equal to the fair market value, shall have the right to purchase the network or interest thereof. Nothing shall prohibit the Grantee in the event of the election of the County to purchase the system from requesting the court to set a reasonable bond of the County to secure the purchase price. The Grantee shall execute such warranty deeds and other instruments as may be necessary.
- E. Nothing in this section shall be deemed to prohibit the mortgage or the pledge of the network or any part thereof.
- F. Any such mortgage or pledge shall be subject to and subordinate to the right of the County under this franchise or applicable laws.

SECTION 10. Payments to County.

- A. The Grantee shall, during each year of Operation under the franchise, pay to the County as a franchise fee a sum equivalent to five percent (5%) of the annual gross revenues as defined in Section 2C.
- B. The Grantee shall file with the County quarterly reports during the period that the franchise shall be in force, showing the gross revenues during the preceding quarter, together with the appropriate sum due. Said report shall be filed within forty-five (45) days after the quarter as established between the County and the Grantee.

- C. The payment made by the Grantee to the County pursuant to the provisions of this franchise ordinance shall not be considered in the nature of a tax but as a franchise fee.
- D. Any payment to the County required under the terms of this franchise or otherwise shall be a part of the franchise fee if applicable law so provides.

SECTION 11. Rates.

At present, rates charged by the Grantee are not subject to County regulation. In the event of a legal change permitting the County to regulate the rates charged by the Grantee, the County shall regulate rates in accordance with federal law and regulations. There shall be no adjustment in rates for basic service as a result of the capital expenditures made by Grantee to upgrade the system unless such an adjustment is allowed by federal law or regulations.

SECTION 12. Free Connection and Service.

- A. The Grantee shall provide free of charge one connection and monthly service for such public and non-profit private schools, elementary and secondary, fire department, mayor's office, library, Commission chambers and offices, county courthouse, sheriff's offices and other County buildings as the County may hereafter designate, provided that such designated locations are within five hundred (500') feet of any existing network cable. The Grantee may charge for footage on the basis of time and material for any such locations beyond the five hundred (500') foot limitation if such connection is designated by the County.

- B. The County reserves the right at its expense to extend service to other areas within such schools, buildings and agencies as it deems desirable without payment of any fee to Grantee.

SECTION 13. Records and Reports.

- A. The Grantee shall keep complete and accurate books of account and records of its business and operations under and in connection with this Franchise. The County at all reasonable hours and upon the giving of reasonable notice to the Grantee or its representatives shall have access to all of the Grantee's plans, contracts and engineering, subscriber and service records relating to the performance of the Grantee in the Shelby County under the terms of this franchise. The County or its representatives shall have access at all reasonable hours and upon the giving of reasonable notice to the Grantee to all accounts and records of the Grantee pertaining to revenue for the purpose of ascertaining the correctness of any and all reports filed with the County. The above records, reports or accounts, a copy thereof shall be maintained at all times in the office of the Grantee.
- B. The Grantee will report to the Chief Administrative Officer or his designee quarterly on the progress of construction until substantial completion of the system.
- C. The Grantee shall file annually with the Chief Administrative Officer or his designee, not later than four (4) months after the end of its fiscal year during which it accepted a franchise hereunder and within four (4) months after the end

of each subsequent fiscal year, a copy of its report to his stockholders, and an audited gross receipts letter applicable to its operations under said franchise during the fiscal year or fraction thereof.

- D. If requested by the County, the Grantee shall file with the Chief Administrative Officer or his designee within thirty (30) days of the request, a list of all network "down-time" received or experienced during the past year. All such submitted data shall also include service restoral period. For the purposes of this provision a certified copy of a logbook reflecting all such incidents will suffice.
- E. The Grantee shall file annually, as set forth herein, with the Chief Administrative Officer or his designee not later than four (4) months after the end of its fiscal year during which it accepted a franchise hereunder and within four (4) months after the end of each subsequent fiscal year, a copy of its FCC Certificate of Compliance to the Network Technical Standards.
- F. The Grantee shall file annually with the Chief Administrative Officer or his designee not later than four (4) months after the end of its fiscal year during which it accepted a franchise hereunder and within four (4) months after the end of each subsequent fiscal year the following supplemental information:
1. If a non-public corporation, a list of all current shareholders and bondholders both of record or beneficial. If a public corporation a list of all shareholders who individually or as a concerted group hold five percent (5%) or more of the voting stock of the corporation.

2. A current list of all Grantee's officers and directors including addresses and telephone numbers.
 3. The names, address and both business and residential phone numbers of the broadband telecommunications network system manager and chief engineer.
 4. One copy of all types of subscriber and user agreements.
 5. Copies of all rules and regulations promulgated by the Grantee during the fiscal year in the conduct of its business.
- G. The Grantee shall file with the Chairman of the Board of County Commissioners of Shelby County all reports required by this ordinance.

SECTION 14. Term of Franchise.

The franchise shall commence upon the effective date of this ordinance and shall expire on January 26, 2006 unless renewed, revoked, or terminated sooner as herein provided. However, grantee shall have the option to extend the franchise and rights granted by this agreement for an additional five (5) years, if, at any time prior to January 26, 2006, grantee upgrades its network so that the network is capable of providing a minimum of 70 channels of programming to subscribers in Shelby County.

SECTION 15. Commencing of Construction.

- A. A Grantee within sixty (60) days after contract with Memphis Light, Gas & Water Division, shall apply for such initial right of way permits from appropriate state, county, and Federal officials necessary for the crossing of highways or roads under their respective jurisdiction; shall apply for permission as needed

from the Federal Aviation Authority to erect and maintain antennas suitable for the needs of the network and its subscribers or users; and shall apply for whatever other permits as needed that a city, county, state or federal agency or utility may require.

- B. A Grantee, within sixty (60) days after the grant of an initial franchise hereunder, shall furnish to the County a bond with corporate surety in an amount as determined by the provisions of Section 5, herein payable to the County to insure the performance as required hereunder. The penal amount of said bond shall be adjusted prior to the commencement of construction of designated construction areas B through F to reflect the additional linear miles of network to be installed by the Grantee. Such bond shall be maintained in effect until substantial completion of construction.
- C. A Grantee shall commence construction, if required, of the area as delineated in the particular franchise agreement within the time period required in its particular franchise agreement and such construction shall thereafter be diligently pursued with operations to commence within the time period as required in its particular franchise agreement. Grantee shall rebuild its existing cable system to conform to the requirements of Section 6E in accord with the terms of the proposal which is annexed hereto. Construction shall proceed in stages if so required in a particular franchise agreement unless excused for one or more of the following reasons.

1. Failure to obtain a right or permit of the sort described above required for the construction or installation of some necessary part of the network, but such failure shall not excuse or relieve a Grantee or its surety under the bond unless Grantee can show that it exerted good faith and effort to obtain such right or permit within the allowed time.
 2. A war or other national emergency which prevents the Grantee from obtaining materials or instrumentalities for the network or skilled personnel to operate it.
 3. A strike or work stoppage affecting construction of the network, a supplier of some component part of the network, termination or interruption of construction by order or regulation of a Federal or State agency or Court, or any other cause beyond a Grantee's control which, upon application by Grantee, the Board of County Commissioners of Shelby County may accept as justification for extending the period during which the Grantee shall commence construction of the network.
- D. Within twenty-four (24) months of the commencement of construction, a Grantee shall have substantially completed construction within the meaning set forth in Section 2, Paragraph (U) of this Ordinance of the area as delineated in its particular franchise agreement.
- E. Material failure to comply with any of the foregoing provisions of this section within the time specified shall be grounds for the revocation of the franchise.

- F. The County may, at its discretion, revoke a franchise granted, in the event a Grantee fails to receive the necessary FCC Certification for cause, unless such cause is directly attributable to an action or condition imposed by the County.
- G. Time shall be of the essence of any franchise granted hereunder. A Grantee shall not be relieved of its obligations to comply promptly with any provision of this Ordinance by the failure of the County to enforce prompt compliance.
- H. For a new franchise, within thirty (30) days of the final passage of the franchise, a Grantee shall deposit with a local bank an irrevocable letter of credit in a minimum amount of Ten Million Dollars (\$10,000,000), which amount shall be maintained until substantial completion of construction.

SECTION 16. Publication Costs.

The Grantee shall assume the cost of publication of this franchise agreement and any further amendments thereto as such publication is required by law. A bill for publication cost shall be presented to the Grantee by the appropriate County officials upon the Grantee's filing of its acceptance by letter addressed to the Chief Administrative Officer or his designee within thirty (30) days after the passage of the franchise agreement or any further amendments thereto and the said publication cost shall be paid at that time by the Grantee.

The Grantee shall further assume the costs of publication of any amendments. The Grantee's acceptance of the agreement and any further amendments shall also be by letter to the Chief Administrative Officer or his designee of Shelby County within the above prescribed thirty (30) days after passage of the amendment.

SECTION 17. Activities Prohibited.

- A. The Grantee shall not allow the operations of its network to interfere with the television reception of non-subscribers or users of the network, nor shall the operations of the network interfere with, obstruct, or hinder in any manner, the operations of the various utilities serving the residents of the County.
- B. The Grantee, during the period of the franchise, or any of its affiliated, subsidiary, parent organizations, or officers holding five percent (5%) or more of outstanding voting stock of Grantee, shall not, within the corporate limits of the County or within ten (10) miles in any direction, engage in the repairing of radio or television receivers. Also, they shall not recommend how or by whom such services should be performed.
- C. Nothing herein is intended to prohibit the Grantee from repairing and servicing convertors or switches which it sells or rents to its customers.
- D. The Grantee shall not as to rates, charges, service facilities, rules, regulations, or in any other respect, make or grant any undue preference or advantage to any subscriber or user or non-subscriber or non-user nor subject any person to prejudice or disadvantage, provided that nothing herein shall prevent the Cable Operator from: conducting promotional campaigns; establishing commercial rates higher than residential rates; providing bulk rate discounts; or from setting rates as necessary to meet competitive market circumstances which may vary from time to time and/or from place to place.

SECTION 18. Limited Purpose.

This Franchise is granted by the Board of County Commissioners of Shelby County to the Grantee solely for the purpose of using the easements, streets, and highways of the County to construct and operate the Grantee's network and is not intended to convey any copyright or patent privileges whatsoever.

SECTION 19. Minority Programming.

The Grantee agrees, subject to applicable law including, without limitation, The Federal Cable Act, that at least one channel shall be made available for commercial lease to minorities. It is understood that said leased channel is not in lieu of any public access channel required under the FCC Rules and Regulations.

SECTION 20. Local Origination Programming.

- A. The Grantee agrees to be capable of producing local Origination programming when the Grantee has at least 3500 subscribers.

To the extent that the Grantee is willing to provide support for local programming prior to obtaining the above number of subscribers by maintaining a color equipped studio and subject to the approval of the FCC such support shall be designated and provided by the Grantee when stated in the acceptance of this franchise by the Grantee as set forth herein.

The Grantee further agrees that should he desire to support this studio with mobile facilities capable of taping and broadcasting "live" programs of special interest and subject to the approval of the FCC, such support shall be designated

and provided by the Grantee when stated in the acceptance of this franchise by the Grantee as set forth herein.

- B. The Grantee agrees that if and when a local origination television studio is constructed by it, that such studio will be constructed within Shelby County.

SECTION 21. Local Office.

During the term of this franchise, or any renewal thereof, the Grantee shall maintain within the County a local business office.

SECTION 22. Interconnection.

- A. Nothing in this Agreement shall be construed so as to prohibit the Grantee from interconnecting its network with other similar contiguous networks either in the City, county or in other municipalities or states. However, any revenue derived therefrom shall be equitably allocated in the calculation of annual gross revenues as set forth in Section 2, Paragraph (C) herein.
- B. The Grantee shall, if requested by the County, have conducted a technical and economic feasibility study of any interconnection requested by the County, said study shall be conducted by an independent agency to be chosen by the County. The results of said study shall be presented to the County and, if the study shows such interconnection to be feasible, the Grantee shall, if so instructed by the County, accomplish said interconnection, each entity affected utilizing the same channel assignment in the event that the study indicates technical feasibility only, the County may elect, at its sole discretion, to arrange for compensation to be paid to the Grantee, in an amount sufficient to assure an economic "break even"

by the Grantee and so order the interconnection. In the event that the study fails to show technical feasibility, the Grantee shall have no further responsibility for accomplishing the interconnection.

SECTION 23. Network Technical Standards.

A. Technical Objectives and Measurements

1. The County reserves the right to:
 - a. modify the objectives from time to time;
 - b. require additional tests at specific terminal locations to deal with problems of the network; and
 - c. conduct its own inspections of the network on its own motion at any time during normal business hours with reasonable advance notice. In addition, the County may add requirements and inspections to conform to local codes and procedures and to protect the safety and convenience of public ways.
2. Grantee shall equip itself with a copy of these rules and standards and make them available both to its employees and to the public at any time during normal business hours.
3. Grantee shall file with the County an annual certificate of compliance to the objectives set forth herein. Such certificates of compliance shall be signed by and include a statement of the experience and qualifications of the person or persons performing said measurements.

4. The network shall be so designed, installed and operated so as to meet the following general requirements:
- a. capable of continuous twenty-four (24) hour daily operation;
 - b. capable of operating over an outdoor temperature range of -40° F. to $+140^{\circ}$ F. without catastrophic failure or irreversible performance changes over variations in supply voltages from 105 to 130 volts AC.;
 - c. capable of meeting all objectives set forth herein over an outdoor temperature range of $+10^{\circ}$ F. over variations in supply voltages from 105 to 130 volts AC;
 - d. operated in such a manner so as to avoid causing interference with the reception of off-the-air signals by non-subscribers to the cable system. The responsibility for immediately remedying such interference should it occur shall rest with the network.
 - e. designed, installed and operated so as to comply with all applicable rules and regulations promulgated by the Federal Communications Commission;
 - f. designed, installed and operated so as to assure the delivery to all subscribers of standard color and monochrome signals on the FCC designated Class I cable television channels without noticeable picture degradation or visible evidence of color distortion or other

forms of interference directly attributable to the performance of the network.

5. The following objectives apply to network performance on the FCC designated Class I cable television channels as measured at any subscriber terminal with a matched termination:
- a. the signal level as measured at the visual carrier frequency for each cable television channel shall not be less than 1000 Q (microvolts) across a 75 ohm terminating impedance.
The aural carrier level shall be maintained between 13 and 17 decibels below its associated visual carrier level.
 - b. the visual carrier signal level on each television channel shall be maintained within:
 - (1) Nine (9) decibels of its minimum value; and
 - (2) Three (3) decibels of the signal level of any visual carrier within six (6) MHz nominal frequency separation; and
 - (3) Twelve (12) decibels of the visual carrier signal level on any other cable television channel.
 - c. network frequency response as measured at any subscriber terminal shall not vary by more than +2db over the six (6) MHz bandwidth of any VHF television channel or corresponding portion of the FM or midband frequency spectrums.

d. The corrected ratio of visual signal level to system noise shall not be less than 40 decibels. This requirement is applicable only to the following signals:

- (1) each off-air signal carried by a cable system serving subscribers within the Grade B contour for that signal; or
- (2) each off-air signal which is first picked up within its Grade B contour; or
- (3) each signal which is received by the network via microwave or other similar form of transmission.

e. Cross-modulation as measured at any visual carrier frequency from the network input to any subscriber terminal shall not exceed -48db [as defined by NCTA Standard 002.0207] measured at approximately 70° F.

f. The ratio of visual carrier signal level to the RMS amplitude of any coherent disturbances such as inter-modulation products, network generated or induced co-channel signals or discreet frequency interfering signals shall not be less than 46 decibels except for officially assigned offset carriers for which it shall not be less than 36 decibels.

g. The terminal isolation between subscribers shall not be less than 18 decibels.

h. The hum modulation as measured over the usable frequency bandwidth from the cable system input to any subscriber terminal

shall not exceed three percent (3%). The percent of hum modulation is defined as the ratio expressed in percent of the average level of the directed signal to one-half (1/2) the indicated peak to peak AC hum.

- i. Radiation from a broadband telecommunications network shall be in accordance with the limits set forth in Part 76, Section 76.605(a)(12) of the FCC Rules and Regulations.
- j. Proposed specifications for FCC designated Class II, III and IV channels shall be submitted by the cable system operator to the County as the use of these channels is implemented.

SECTION 24. Measurements.

- A. Test procedures used in verification of the performance criteria set forth herein shall be in accordance with good engineering practice. The test procedures included herein are done so as a guide and should be made under conditions which reflect network performance during normal network operations. As there is more than one technically acceptable method for performing many of the measurements, the technique and equipment utilized if different from those set forth below shall be fully described in the annual certificate filed with the County.
- B. All measurements shall be made from the beginning or input to the network (head end) to at least three (3) subscriber locations, at least two (2) of which shall be "worst case" locations (network extremities). Measurements shall be made at 75

ohms with the loss of the set transformer indicated where applicable for each test location. The measurements are to be made as follows:

1. Network frequency response measurements may be made with a calibrated signal generator, variable attenuator and a frequency selective voltmeter. [If an accurately calibrated field strength meter is used for the measurements, its date of calibration shall be indicated on the certificate of compliance filed with the County.] All TV signals except for ALC, AGC, or ASC pilot carriers may be disconnected during this test. With all automatic gain control amplifiers in the section under tests set to their normal operating mode, the signal generator shall be connected to the input of the network and set for a CW signal at the desired frequency and location. With the meter and variable attenuator connected in series to the subscriber terminal under test, the signal level shall be measured and recorded. Measurements shall then be made in a similar manner for all video carrier frequencies on the network at the levels normally carried on the system.
2. Network signal-to-noise measurements may be made in accordance with NCTA Standard 005.0669 or with a calibrated signal generator and frequency selective voltmeter connected as described in (1) above. The signal generator shall be tuned, in turn, to the visual carrier frequency of each FCC designated Class I cable television channel and the signal level at the subscriber terminal recorded. The meter should then be tuned to

a frequency 25 MHz above the visual carrier frequency of each channel described above and with the signal generator disabled, the indicated noise level recorded and corrected by an appropriate factor representing the ratio of 4 MHz to the noise bandwidth of the frequency selective voltmeter.

3. The network cross-modulation measurement shall be performed in accordance with NCTA Standard 002.0267 or by using a calibrated signal generator having controllable modulation, a detector and an oscilloscope [If a field Strength meter with an internal detector is utilized, a description of the meter shall be included on the certificate of compliance filed with the County.] After connecting the Signal generator to the lowest Standard VHF television frequency input terminal at the network's "head end" signal combiner, its output shall be set for an unmodulated Signal identical in frequency and level to that of the signal normally Present at that point. The signals of all other channels normally carried on the network shall be fed into the combiner at their normal levels. After connecting the field Strength meter to the subscriber terminal, it shall be tuned to the visual carrier frequency of the channel under test and with the oscilloscope the modulation level may be read directly from the scope, recorded and corrected by appropriate factors for temperature and measurement technique.

4. the amplitude of the discrete frequency interferences within a cable television channel may be determined with a frequency selective voltmeter, calibrated for adequate accuracy.
5. the terminal isolation between any two subscriber terminals may be measured by applying a signal of predetermined amplitude from a signal generator to one terminal in the reverse direction and measuring the amplitude of the signal at the other terminal with a frequency selective voltmeter.
6. the network hum modulation may be measured at each visual carrier frequency on the network using a calibrated signal generator, a detector and an oscilloscope. The signal generator shall be connected, and the level and frequency set at their normal levels. With the detector and oscilloscope connected to the subscriber terminal, the average level of the detected signal and the peak-to-peak AC hum will be indicated on the oscilloscope. The percent of hum modulation for this purpose is defined as the ratio expressed in percent of the average level of the detected signal to one-half (1/2) the indicated peak-to-peak AC hum.
7. network radiation measurements shall be made in accordance with the procedures established in Part 76, Section 76.690 (b)-(1)-(b)(5) of the FCC Rules and Regulation for Cable Television Systems.

SECTION 25. Construction Standards.

- A. All construction practices shall be in accordance with standard utilities practices as detailed in the Edison Electrical Institute Publication E3 governing joint-use agreement and in the United States Department of Commerce, National Bureau of Standards, Handbook Number 18, "Safety Rules for the Installation and Maintenance of Electrical Supply and Communications Lines", and all state and local codes where applicable.
- B. All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the applicable portions of the current edition of the National Electric Code.
- C. Antenna supporting structures (towers) shall be designed for the proper loading zone as specified in Electronics Industry Association's R.S.-22 specifications.
- D. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aeronautical Agency, governing the erection and operation of supporting structures or TV towers and all other applicable local or state codes and regulations.
- E. Nothing in this Agreement shall be construed so as to authorize the Grantee to construct, erect or operate and maintain in the County, new poles and underground conduits where existing poles and conduits are servicing the area. The Grantee does have the right, however, to construct, erect, operate and maintain poles and underground conduits where none exist, or if poles and

conduits are unavailable to the Grantee on reasonable terms at the time the Grantee seeks to install his network subject to the provisions of this franchise.

- F. Nothing in this Agreement shall be construed so as to relieve the Grantee of the obligation of placing underground the network facilities in areas presently served or to be served in the future by underground utility facilities. The Grantee shall abide by the requirement of the County in regard to the installation of such facilities as set forth in Section 8, Paragraph (F) herein.
- G. All construction and installation of all Grantee's network facilities shall be subject to the prior approval of the County and to inspection and supervision of such construction and installation as set forth in Section 8.

SECTION 26. Regulatory Jurisdiction and Procedures.

- A. The County shall have continuing regulatory jurisdiction and supervision over the operation of any franchise granted hereunder.
- B. The continuing regulatory jurisdiction of the County may be exercised by a Broadband Telecommunications Regulatory Board that the County may establish. The Board hereafter established may have the following responsibilities and duties, and such other responsibilities and duties that the County Commissioners may, from time to time, assign to it.
1. Resolving disputes or disagreements between subscribers and the Grantee after investigation, should the subscriber and the Grantee not first be able to resolve their dispute or disagreement, and issuing its decision or findings which shall be binding upon the Grantee except as such decision

or findings shall be appealed, as outlined in said ordinance and/or to a court of competent jurisdiction. All subscriber complaints, disputes or disagreements shall be directed to the Chief Administrative Officer or his designee who shall sit as a member of the Board.

2. Reviewing and auditing reports submitted to the County as required hereunder and other such correspondence as may be submitted to the County concerning the operation of the Broadband Telecommunications Network. To assure that all reports required under the Ordinance are completed and filed. To review the rules and regulations set by the Grantee under the provisions of Section 7 herein.
 3. Coordinate and publicize the implementation and usage of the governmental and educational channels provided hereunder.
 4. Work with the public and the media to assure that all tariffs and rules pertinent to the operation of the Broadband Telecommunications Network in the Shelby County are made available for inspection by the public at reasonable hours and upon reasonable request.
 5. Confer and coordinate with the Grantee on the interconnection of the County's Broadband Telecommunications Network with other similar networks.
- C. Any inquiry, proceeding or other action on this franchise required to be taken by the County Commission in regard to the broadband telecommunications network including but not limited to a change of subscriber or user rates or application

therefor, shall, in addition to any requirements upon the County Commission sitting as a rate-making body, be taken only after thirty (30) days notice of said proposed action, inquiry, or proceeding is published in a local newspaper having general circulation and a copy of said notice is served upon the Grantee. The Grantee shall be given thirty (30) days notice and shall have an opportunity to respond in writing and/or at the hearing pursuant to the rules of the County Commission and members of the public shall have an opportunity to respond or comment in writing on the proposed action and appear at said hearing, said inquiry, proceeding or hearing, however, shall be set no later than ninety (90) days after notice to the Grantee. The public notice required by this section shall state clearly the action or proposed action to be taken, the time provided for response, including response by the public, the person or persons in authority to whom such responses shall be addressed and such other procedures as may be specified by the County Commission. If a hearing is to be held, the public notice shall give the date and time of such hearing and whether public participation will be allowed. The Grantee is a necessary party to any hearing conducted in regard to its operation.

The provision for a hearing within ninety (90) days is mandatory unless such time is extended by agreement between the County and the Grantee.

SECTION 27. State of the Art.

- A. At all times, the Grantee's broadband telecommunications network shall be maintained current with the "state of the art". The County may, at its sole

discretion, require the Grantee to comply with the provisions of this section. State of the Art shall mean that level of technical performance, capacity and capability which has been developed and demonstrated in the cable industry to be operationally workable and profitable.

- B. The Grantee shall not provide any new service to subscribers without prior notification of the Chief Administrative Officer or his designee. Fees, rates on charges for the proposed new services, shall be filed with the Chief Administrative Officer or his designee at least thirty (30) days prior to their effective date.

SECTION 28. Validity and Acceptance of Franchise, Irrevocable Letter of Credit.

- A. The Grantee shall not be excused from complying with any of the terms and conditions of the Franchise by any failure of the County upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions. The Grantee expressly acknowledges that it accepts the Franchise relying upon its own investigation and understanding of the power and authority of the County to grant the Franchise. The Grantee, by acceptance, acknowledges that it has not been induced to accept this Franchise by any understanding or promise or other statement, whether verbal or written by or on behalf of the County or by any other third person concerning any terms and conditions of the Franchise not expressed herein.

The Grantee further acknowledges by acceptance of the Franchise that it has carefully read the terms and conditions.

- B. Within thirty (30) days after the passage of an ordinance granting a franchise to a Grantee and any amendments thereto, Grantee shall file a written acceptance of the franchise and any amendments thereto and shall also file all necessary insurance certificates and the bond if required under the terms of its franchise. This action shall signify the validity of the franchise and any amendments thereto.

SECTION 29. Revocation of the Franchise.

- A. In addition to any other right and powers which the County may have, the County reserves as an additional separate and distinct power the right to terminate this franchise and all rights and privileges of the Grantee hereunder.
- B. The right to terminate any franchise granted hereunder and rescind all rights and privileges associated therewith shall be on the following grounds:
1. Substantial noncompliance by the Grantee with any material provision of this Ordinance or of any supplemental written agreement entered into by and between the County and the Grantee.
 2. The Grantee becomes insolvent, enters into receivership or liquidation, files an application for bankruptcy or for composition of creditors, is unable or unwilling to pay his debts as they mature or is in financial difficulty of sufficient consequence so as to jeopardize the continued operation of the network.
 3. Substantial and willful violation by the Grantee of any Federal Communications Commission order or ruling or the order or ruling of any

other governmental body having jurisdiction over the Grantee unless the Grantee is lawfully contesting the legality or applicability of such order.

- C. In the event that the County shall decide to terminate for cause a franchise granted hereunder, it shall give the Grantee ninety (90) days written notice of its intention to terminate and stipulate the cause. If during the ninety (90) day period the cause shall be cured to the satisfaction of the County, the County may, at its discretion declare the notice to be null and void. In any event before a franchise may be terminated, the Grantee must be provided with an opportunity to be heard before the County Commission. Such hearing to be in accordance with the procedures specified in Section 26(C).
- D. Nothing shall prohibit the County from imposing lesser sanctions or censures as set forth herein for willful or repeated violations of material provisions of this franchise, and in the case of continuing violations each day in which such violation continues shall be considered a separate and distinct violation.
- E. For willful violation of material provisions of this ordinance, the following penalties may be imposed by the Board:
1. For failure to file required plans or information \$ 50 per day
 2. For failure to comply with reasonable orders of the Broadband Telecommunications Regulatory Board. \$100 per day
 3. For failure to commence construction or operation in accordance with the provisions of Section 15 herein. \$200 per day

4. For failure to complete construction in accordance with the provisions of Section 15 herein. \$200 per day
 5. No penalty shall be assessed pending a resolution of any appeal by the Grantee to the County Commission or a court of competent jurisdiction.
 6. In the event that the Board shall decide to impose a penalty for a violation of this Ordinance or of a reasonable Board Order, it shall give the Grantee ten (10) days written notice of its intention to do so. If, during the ten (10) day period, the violation shall be corrected to the satisfaction of the Board; the Board may, at its discretion, declare the notice to be null and void.
- F. The penalties imposed pursuant to this section are in addition to and not in lieu of the rights of the County pursuant to Section 5 of this franchise.

SECTION 30. Expiration and Renewal of Franchise.

- A. Upon the termination of the franchise without a renewal the Grantee shall if permitted by the County, abandon said property in place or enter upon the public ways and public places of the County for the purpose of removing therefrom all of its plants, structures and equipment and shall promptly remove all of its facilities and equipment from the premises of all subscribers at a time convenient to both the Grantee and the subscriber.
- B. In so removing such plants, structures and equipment, the Grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave such public ways and places in as good condition as that prevailing prior to the

Grantee's removal of its equipment and appliances without affecting, altering or disturbing in any way the electric distribution or telephone cables, wire or attachments on any poles. The County Engineer or his appointee shall inspect and approve the condition of such public ways and public places and cables, wire, attachments, and poles after removal. In the event of dispute of the County Engineer's opinion, the Grantee or any other person may request a public hearing before the County. Liability insurance and indemnity provided for herein shall continue in full force and effect during the entire period of removal.

SECTION 31. Additional Rights of the County in the Franchise.

- A. The County reserves the right during the life of any franchise granted hereunder, to install and maintain free of charge upon the poles and conduits of the grantee any wire and pole fixtures necessary for municipal networks such as sheriff and fire, on the condition that such installations and maintenance thereof do not interfere with the Operations of the Grantee.
- B. The County reserves the right during the life of any franchise granted hereunder, to inspect and supervise all construction or installation work performed subject to the provisions of this Ordinance to insure compliance with the terms of the Ordinance as set forth in Sections (8) and (25) herein.
- C. Nothing in this Agreement shall in any way or to any extent be construed to waiver, modify, or abridge the County's right of eminent domain in respect to the Grantee.

- D. Any right or power in, or duty impressed upon any officer, employee, department or board of the County shall be subject to transfer by the County Commission or by law to any other officer, employee, department or board of the County.
- E. The County shall have the first right of refusal to set any poles and underground conduits required. The Grantee shall obtain permission from the County before constructing or erecting any new poles or underground conduit.
- F. The County reserves all rights not specifically granted herein.

SECTION 32. Designated Franchise Area.

- A. The Grantee shall provide service to all dwelling units located within the designated franchise area. If extraordinary circumstances exist for the denial of such service, such denial may be reviewed by the CAO upon request of the subscriber and all alternatives for the provision of service shall be reviewed.
- B. In the event the continued use of a street within a designate construction area is denied for any reason, the Grantee will make every reasonable effort to provide service by alternate route.

SECTION 33. Subscriber Agreement.

A copy of all types of standard agreements with subscribers used by the Grantee shall be provided to the Chief Administrative Officer or his designee within thirty (30) days of their request.

SECTION 34. Subscribers Antennas.

The Grantee shall not require the removal, or offer to remove any existing Subscriber's antenna as a condition or provision of service. However, a subscriber may request in writing the

removal of any existing antenna. Such written request forms that may be developed or used by the Grantee shall state that the removal of an antenna is not a condition of providing service and these forms shall be subject to approval of the County before use. Also the Grantee shall demonstrate to the satisfaction of the County, adequate insurance protection for the removal of subscriber antennas.

SECTION 35. Subscriber Refunds.

If any subscriber or user of the Grantee of less than one (1) year terminates Service because of Grantee's failures to render service to such subscriber of a type and quality provided for herein or if service to a subscriber or user of less than one (1) year is terminated without good cause, or if the Grantee ceases to operate the broad band telecommunications network authorized herein for any reason except termination or expiration of a franchise granted hereunder, the Grantee shall refund to such Subscriber of less than one (1) year amount equal to the installation and connection charges paid by him in accordance with the schedule of charges filed with and approved by the County. In no event shall the Grantee be required to refund the monthly charge except as he may express a willingness to do so.

SECTION 36. Filing and Communications with Regulatory Agencies.

The Grantee shall simultaneously file and maintain with the Chief Administrative Officer or his designee copies of all petitions, applications, and communications transmitted by the Grantee to, or received by the Grantee from all federal and State regulatory commissions or agencies having competent jurisdiction to regulate the Operations of any broadband telecommunications network authorized hereunder.

SECTION 37. Further Agreements and Waivers.

- A. The Grantee agrees as between Grantee and County, that all construction, operation and maintenance by the Grantee of any network in the County shall be, and shall be deemed and construed in all instances and respects to be, under and pursuant to said franchise and not under or pursuant to any other right, privilege, power, immunity or authority whatsoever.
- B. Shelby County has considered the legal, character, financial, technical and other qualifications of the Grantee and all of the other applicants and the adequacy and feasibility of its construction arrangement in a full public proceeding and has approved the Grantee's qualifications thereunder as a part of said full public proceeding, affording due process.

SECTION 38. Expansion of Access Channel Capacity.

Whenever either of the public access, educational access and governmental access channels provided under Section 6 are in use during eighty percent (80%) of the weekdays (Monday - Friday) for eighty percent (80%) of the time for six (6) consecutive weeks, the Grantee of the Broadband Telecommunications Network shall have six (6) months in which to make an additional channel available for any or all of the above described purposes.

SECTION 39. Equal Opportunity.

In its employment practices, Grantee shall not discriminate against any person on the basis of race, color, creed, national origin, religion, sex, age, disability, or marital status.

SECTION 40. Resolutions Repealed.

The franchise granted to Memphis CATV, Inc., on January 26, 1966, to operate and maintain a community television system throughout Shelby County, Tennessee is hereby repealed. However, the resolution of March 9, 1983, granting Millington CATV, Inc., a franchise to operate a community television system in certain designated parts of Shelby County, Tennessee is not repealed. All other resolutions or parts thereof in conflict with the provisions of this ordinance are hereby repealed.

SECTION 41. Severability.

If any section, paragraph, sentence, clause, phrase, or portion of this Agreement is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not effect the validity of the remaining portions hereof.

SECTION 42. Enacting Clause.

BE IT FURTHER ORDAINED, that this Ordinance take effect from and after the date it shall have been passed by the County Commission, certified and delivered to the Office of the Mayor in writing by the Clerk of the County Commission, and become effective as otherwise provided by law.

Prepared by: Doris Alston

Approved by: *William P. Blinn*
County Attorney

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Commissioner WilliamsRESOLUTION AUTHORIZING THE COUNTY ENGINEER
TO IMPOSE A VARIABLE FEE FOR ALL ISSUANCE
OF ROAD CUT AND BORING PERMITS IN COUNTY
RIGHT-OF-WAY

WHEREAS, For a number of years Shelby County has issued permits allowing the cutting and boring of County roads and right-of-ways for the purpose of installing pipe and various utilities; and

WHEREAS, No fee has been heretofore imposed upon users of these permits; and

WHEREAS, The issuing of said permits requires review of sketches and plans, and inspection of the road cut by the County Engineer's staff; and

WHEREAS, There has been a new road cut procedure developed for the purpose of better control and less maintenance of said cuts; and

WHEREAS, The County Engineer is desirous of imposing a variable fee for the issuance of road cut and boring permits in County right-of-ways to defray the cost of review and inspection; and

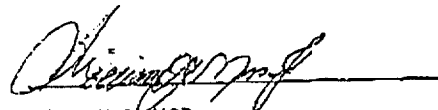
WHEREAS, Said fee would be according to a graduated scale determined by the length and depth of the cut and bore.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, That the County Engineer is hereby authorized to impose a fee to defray the cost of review and inspection on the issuance of road cut and boring permits in County right-of-ways in accordance with a graduated scale to be determined by the length and depth of the cut or bore.



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BE IT FURTHER RESOLVED, That any and all revenues derived from said fee will be deposited in an existing line item in the County Engineer's O & M Budget.


COUNTY MAYOR

DATE: 1-28-82

ADOPTED JANUARY 25 1982

A TRUE COPY ATTEST
DOROTHY G. BEARD,
CLERK OF COUNTY COMMISSION

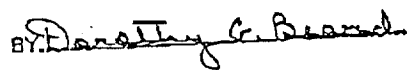
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CHART #1

Time Warner Entertainment Company, L.P. Corporate Partners

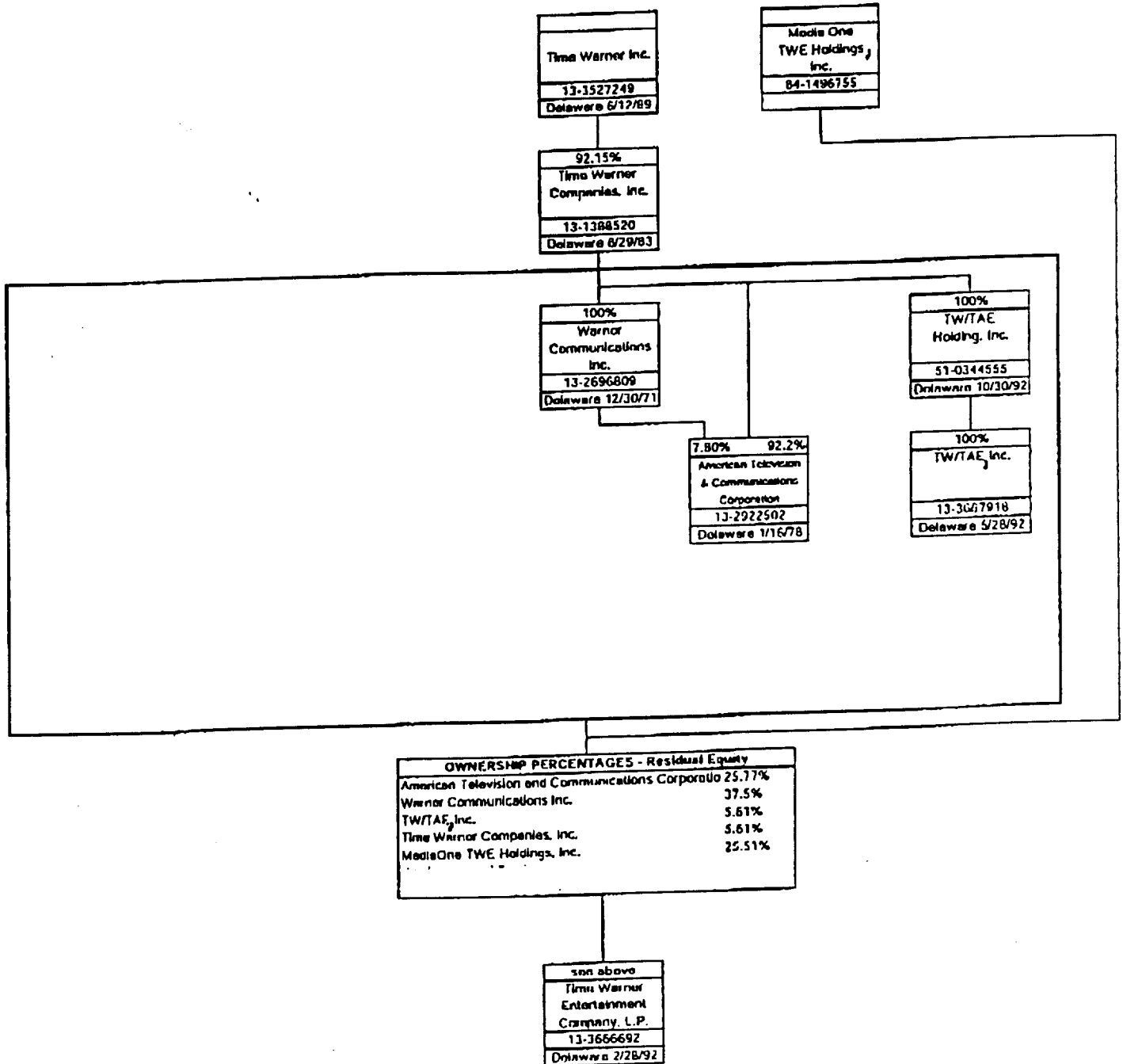


CHART #2

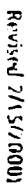


CHART #3

